

19 MARCH 1948

I N D E X

	<u>Page</u>
Summation by the Defense (cont'd) by Mr. HAYASHI	44477
Summation by the Defense (cont'd) by Mr. Roberts	44493
<u>MORNING RECESS</u>	44531
Summation by the Defense (cont'd) by Mr. Roberts	44532
Summation by the Defense (cont'd) by Mr. Howard	44562
<u>NOON RECESS</u>	44571
Summation by the Defense (cont'd) by Mr. Howard	44572
<u>AFTERNOON RECESS</u>	44618
Summation by the Defense (cont'd) by Mr. Howard	44619

1 Friday, 19 March 1948

2 - - -

3  
4 INTERNATIONAL MILITARY TRIBUNAL  
5 FOR THE FAR EAST  
6 Court House of the Tribunal  
7 War Ministry Building  
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,  
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with  
13 the exception of: HONORABLE JUSTICE R. B. PAL,  
14 Member from India, not sitting from 0930 to 1600;  
15 HONORABLE JUSTICE E. STUART McDOUGALL, Member from  
16 the Dominion of Canada and HONORABLE JUSTICE B. V. A.  
17 ROLING, Member from the Kingdom of the Netherlands,  
18 not sitting from 1330 to 1600.

19 For the Prosecution Section, same as before.

20 For the Defense Section, same as before.

21 - - -

22 (English to Japanese and Japanese  
23 to English interpretation was made by the  
24 Language Section, IMTFE.)  
25

R  
e  
i  
c  
h  
e  
r  
s  
&  
G  
r  
e  
e  
n  
b  
e  
r  
g

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present except SHIRATORI and UMEZU, who are represented by counsel. The Sugamo Prison surgeon certifies that they are ill and are unable to attend. The certificates will be recorded and filed.

With the Tribunal's permission KIMURA will be absent from the court room for the first period of the morning session, conferring with his counsel.

Mr. HAYASHI.

MR. HAYASHI: I continue the reading of my statement on page 52, Chapter IV, as to Associations.

1. The Imperial Rule Assistance Association.

It has been stated in the General Argument Part, that defendant HASHIMOTO was not "one of the founders of the Imperial Rule Assistance Association", as observed by the prosecution. Owing to his having much experience in national movements, the defendant HASHIMOTO was appointed one of many directors (Sohmu) of the Imperial Rule Assistance Association (IRAA) by Mr. KONOYE, Fumimaro. However, after about five months, and while the second KONOYE Cabinet was in power, he resigned the post and seceded from the Association because of its reorganization .

1           Then, the said association's objective must  
2 be proved. Mr. GOTO, Fumio, a witness who was called  
3 to the Court by the prosecution, testified during his  
4 cross examination as follows:

5           "Q In the platform of the Imperial Rule Assistance  
6 Association it is stated that, 'Thus, we shall become  
7 the glorious moral leaders of the world.' What did  
8 this mean?

9           "A The Imperial Rule Assistance organization  
10 endeavored to raise the moral standard of the nation,  
11 and to gain respect from various nations and countries.

12          "Q Also, in the second article of the platform  
13 of the Imperial Rule Assistance Association it is  
14 stated, 'This society shall strive for the establish-  
15 ment of a world new order.' Is it true that this  
16 society has ever striven for a world new order?

17          "A The association has never endeavored to attain  
18 such a goal. They had no time, and besides that,  
19 fortunately, they never gained enough power to do that.  
20

21          "Q In the second article of the regulations for  
22 the Imperial Rule Assistance movement it is stated:  
23 'That the entire nation shall be as one and shall  
24 fulfill their duties each in his own sphere, and  
25 establishing such an organization, shall work in order



1 that this organization shall function smoothly and in  
2 this way shall strive to fulfill their duties as  
3 subjects.' Was there any other object besides the  
4 purpose that I have just quoted in this movement?

5 "A It has no other object than that.<sup>a</sup>

6 "Q ...To be the moral leader of the world and  
7 to work for the establishment of a new world order,  
8 these are not included in the purpose of the Imperial  
9 Rule Assistance Association?

10 "A They are not included in the purpose.<sup>b</sup>

11 "Q Then, was the purpose of the Imperial Rule  
12 Assistance Association to prepare the people for an  
13 inhumane and illegal war against Great Britain and  
14 America, a war which should not have been begun and a  
15 war which cannot be defended? Was the purpose of the  
16 Imperial Rule Assistance Association to prepare public  
17 opinion for such a war, or was it not?

18 "A According to my understanding, the Imperial  
19 Rule Assistance Association was not formed with such  
20 an object in view."<sup>c</sup>

21  
22 That the Imperial Rule Assistance Association  
23 had nothing to do with the Pacific War is testified by

- 24 a. Tr. 1643 - 6  
25 b. Tr. 1646  
c. Tr. 1648 - 9

witness ANDO, Kisaburo in his affidavit<sup>a</sup> to-wit:

1 "Regarding the Greater East Asia War, we never heard  
2 anything that would lead our association to believe  
3 such a war imminent, either at the time of my assump-  
4 tion of office, or after my assumption, in any guidance  
5 received from any ministry, in any instructions or  
6 demands from them, either outwardly or confidentially,  
7 until the issuance of the Imperial Rescript declaring  
8 war."<sup>b</sup>  
9

10 Further, concerning the said association, the  
11 defendant HASHIMOTO testifies in his affidavit (Ex. 3195,  
12 par. 22):<sup>c</sup> "In the fall of 1940 I was appointed a  
13 director of the IRAA, formed by Prince KONOYE, Fumimaro,  
14 from which I resigned in February 1941. The said asso-  
15 ciation's object was the practice of the 'Way of the  
16 Subject'. It was not a body which was formed with  
17 aggressive war as its aim nor did it work toward such  
18 an end." In appendix E of the Indictment it is stated:  
19 "The defendant HASHIMOTO was a member of a number of  
20 societies for the instigation of army control over  
21 politics and furtherance of aggressive warfare." However,  
22 it is fully evident from the proofs mentioned above that  
23 the Imperial Rule Assistance Association was not such an  
24

- 25 a. Ex. 2363  
b. Tr. 18,148-9  
c. Tr. 28,708

organization as alleged by the prosecution.

1           2. The Imperial Rule Assistance Men's Corps  
2           (IRAMC) ("Yokusan-Sonon-Dan").

3           The defendant HASHIMOTO was connected for a  
4 short time with the Imperial Rule Assistance Men's Corps,  
5 which was a subsidiary of the Imperial Rule Assistance  
6 Association. The prosecution has not adduced evidence  
7 regarding this body. However, with regard to its object  
8 and the like, the defense must cite evidence to the Court.  
9

10           The witness OGAWA, Kiichi testifies in his  
11 affidavit (Ex. 3193, par. 13 and 14)<sup>a</sup>: "In September 1944  
12 at the time of the dissolution of the Dainihon Sekiseikai  
13 I joined the Imperial Rule Youth Association. Its  
14 membership never included a single military man on the  
15 active list nor a single influential government official.  
16 I was at the time of my joining the association one of  
17 the General Affairs committee, and in November 1944  
18 I became Chief of the Guidance branch." The activity  
19 of the IRYA was principally the encouragement of an  
20 increase in wheat production. The activity of the IRYA  
21 was absolutely not directed toward aggressive war."<sup>b</sup>  
22

23           The defendant HASHIMOTO, too, testifies in  
24 his affidavit (Ex. 3195, par. 23)<sup>c</sup>: "In September 1944

25           a. Ex. 3193

          b. Tr. 28,785-6

          c. Ex. 3195



1 I was appointed Headquarters Director of the Imperial  
2 Rule Assistance Adult Association which was a part of  
3 the IRAA, but I resigned in February 1945. After  
4 joining this association my only work was the barley  
5 crop increase campaign. The association was not a  
6 body which was formed with aggressive war as its aim  
7 nor did it work toward such an end."<sup>a</sup>

8 It can be proved by the evidence mentioned  
9 above that this organization, too, was not for the  
10 instigation of army control over politics and further-  
11 ance of aggressive warfare.

12 3. The Imperial Rule Assistance Association.

13 With reference to this organization, the prose-  
14 cution has produced no evidence. Therefore, it is not  
15 necessary to make any argument at this time.

16 4. Japan Youth's Party.

17 The Japan Youth Party was not a body for the  
18 instigation of army control over politics and further-  
19 ance of aggressive warfare. The prosecution has proved  
20 nothing concerning this party. So proof will be given  
21 briefly.

22 The defendant HASHIMOTO testifies in his  
23 affidavit (Ex. 3195, par. 19, as follows:<sup>b</sup>

- 24 a. Tr. 28,798  
25 b. Ex. 3195



1 "After I left active service I founded, in  
2 October 1936, with a view to national reform, the Great  
3 Japan Youth Party, of which no soldier on active duty  
4 nor any distinguished personages were members.

5 "The party was supported by 1 Yen per capita  
6 entrance fee and 1 Yen per capita annual membership fee  
7 paid in by a little less than 20,000 members. It was  
8 never subsidized by the army or from any other quarter.  
9 It did not aim at aggressive war."<sup>a</sup>

10 The witness OGAWA, Kiichi testifies in his  
11 affidavit (Ex. 3193, par. 3-5)<sup>b</sup> as follows:

12 "3. The purposes of the Dainihon Seinento  
13 were to abolish the established parties and to accomplish  
14 domestic reform since the general public feeling at that  
15 time was that these parties and the Zaibatsu, in collus-  
16 ion, had selfishly appropriated to themselves the  
17 government to such extent that extreme corruption was  
18 rampant everywhere and the only ones whom the public  
19 could trust were the military and the judiciary. The  
20 Dainihon Seinento absolutely did not have aggressive war  
21 as its objective.

22 "4. ...It never included a single military  
23 man on the active list, nor a single influential  
24

25 a. Tr. 28,797

b. Ex. 3193

government official.

1 "5. ... The society never received any  
2 financial aid from the military or from any other  
3 source."<sup>a</sup>  
4

5 5. The Dainihon Sekisei-Kai.

6 With reference to the Dai Nihon Sekisei-Kai  
7 the prosecution has proved nothing. Therefore, there  
8 is no need to state much concerning this society. How-  
9 ever, I will state that the said society was not a body  
10 for the instigation of army control over politics and  
11 furtherance of aggressive warfare.

12 The defendant HASHIMOTO testifies in his  
13 affidavit as follows:<sup>b</sup>

14 "After the dissolution of the said party (Great  
15 Japan Youth Party) in October 1940, I established the  
16 Great Japan Loyalty Society (Dai-Nihon Sekisei-Kai),  
17 consisting of some of the members of the former. No  
18 soldiers on active duty nor any distinguished personages  
19 were among its members. This society was maintained  
20 by about 5,000 members' entrance fees at 2 Yen per  
21 capita and an annual membership fee of 1 Yen per capita  
22 and was not subsidized by the army or from any other  
23 quarter. This society did not aim at aggressive war.  
24 It was dissolved in September 1944."<sup>c</sup>  
25

a. T.28,783-4. b. Ex. 3195, par.20. c. T.28,797-8.

The witness OGAWA, Kiichi testifies in his affidavit as follows:<sup>a</sup> "The Dai Nihon Sekisei-Kai, a thought organization, was formed upon the dissolution of the Dai Nihon Seinen-to out of a portion of the latter's membership.

"8 The Dai Nihon Sekiseikai had as its objectives the guidance of the thought of Japanese youth and the encouragement of increasing the rice production. This increase was to be based on the Oninoue system. Aggressive war was absolutely no part of the society's objectives.

"9. The membership of the Dai Nihon Sekiseikai never . . . included a single military man on the active list or a single influential government official."

"10. The society never received any financial aid from the military or from any other source."<sup>b</sup>

6. The Sakura-Kai (The Cherry Blossom Society).

It has been proved in the part of Details, Chapter I, Sec. 1, that the Sakura-Kai was not an organization "for the instigation of army control over politics and furtherance of aggressive warfare."

On the grounds as proved above, it has become completely evident that there is no evidence whatsoever given by the prosecution with regard to the allegation

a. Ex. 3193, par. 7-10

b. T. 28,784-5



1 in Appendix E of the Indictment, that is, "The defend-  
2 ant HASHIMOTO was a member of a number of societies for  
3 the instigation of army control over politics and fur-  
4 therance of aggressive warfare." Defendant HASHIMOTO  
5 was not a member of such societies.

6 CHAPTER V.

7 BOOKS, ESSAYS AND SPEECHES

8 1. HASHIMOTO's Books.

9 Appendix E of the Indictment indicates the  
10 defendant HASHIMOTO as the "author of a large number  
11 of books, articles in the magazine 'Taivo Dai-Nippon',  
12 and other publications and public speeches, all advocat-  
13 ing aggressive warfare."

14 As such books, the prosecution cites, namely,  
15 "Messages to Young Men",<sup>a</sup> "The Inevitability of  
16 Renovation",<sup>b</sup> "The Road to the Reconstruction of the  
17 World",<sup>c</sup> and "The Second Creation".<sup>d</sup>

18  
19  
20  
21  
22  
23 a. Ex. 2190-A

24 b. Ex. 264, 866

25 c. Ex. 177

d. Ex. 2187-A



1           According to the List of HASHIMOTO, Kingoro's  
2        <sup>a</sup> Books, the date of writing "Messages to Young Man"  
3        is June 1937 and that of its publication is 5 July  
4        1937. "The Inevitability of Renovation" was written  
5        on 25 December 1940 and published on 31 December 1940.  
6        The excerpts from "The Road to the Reconstruction of  
7        the World" was written on 17 December 1936 and pub-  
8        lished on 30 January 1941. "The Second Creation"  
9        was written on 19 November 1939 and published on 30  
10       January 1941.

11           When referred to the defendant HASHIMOTO's  
12        <sup>b</sup> personal history, it is evident that these above  
13        mentioned books were all written and published by him  
14        as an ordinary civilian.

15           In this regard, the defendant HASHIMOTO  
16        <sup>c</sup> testifies in his affidavit, "My publications  
17        'Messages to Young Men,' 'The Inevitability of  
18        Renovation,' 'The Road to the Reconstruction  
19        of the World' and 'The Second Creation,' ----  
20        were all written and published when I was an  
21

22  
23       a. Tr. 28,764, Ex. 3190.

24       b. Ex. 105

25       c. Tr. 28,791-2, Ex. 3195, Par. 6.

1 ordinary civilian. In these publications .....  
2 were described only my personal opinions as an ordin-  
3 ary civilian, and they did not represent any plan or  
4 conspiracy worked out in cooperation with any other  
5 party.\*

6           The witness OGAWA, Kiichi testifies in his  
7 affidavit,<sup>a</sup> "The books of HASHIMOTO, Kingoro --  
8 'Advice to Youth,' 'The Second Creation,' 'The  
9 Inevitable Renovation,' 'How to Rebuild World,' and  
10 'The Declaration of HASHIMOTO, Kingoro,' ..... were  
11 all written after he gave up his military career  
12 and had become an ordinary civilian ....."

13           If these books mentioned above, "The  
14 Inevitability of Renovation" was published when the  
15 defendant HASHIMOTO was a director (Sohnu) of the  
16 IRAA. However, it was not written in the capacity  
17 of the director of the IRAA. To the question by  
18 prosecutor Tavenner, the defendant HASHIMOTO clearly  
19 answered to this effect.<sup>b</sup> The defendant HASHIMOTO  
20 also testified clearly that this book is reproductions  
21 of the articles appearing in the "Taiyo Dai-Nippon."<sup>c</sup>  
22 By the way, the Director of the IRAA is only an  
23 ordinary civilian.  
24

25 a. Tr. 28,786, Ex. 3193, Par. 15.

b. Tr. 28,851.

c. Tr. 28,838.

1           Upon examination of these four books of his,  
2     it is found that although some of them "describe the  
3     necessity of war," none of them is to be regarded  
4     as "advocating aggressive warfare." Therefore, the  
5     prosecution's allegation that the defendant HASHIMOTO  
6     is an author of a large number of books advocating  
7     aggressive warfare is not based on evidence.

8           2. Articles.

9           The prosecution indicates the defendant  
10    HASHIMOTO as advocating aggressive warfare as an  
11    author of a large number of articles appearing in  
12    the magazine "Taiyo Dai-Nippon" and in evidence pro-  
13    duced a bundle of copies of the Magazine "Taiyo  
14    Dai-Nippon" in which his essays concerning the  
15    Greater East Asiatic Co-prosperity Sphere appear.<sup>a</sup>  
16    And, these essays are all cited in the List of  
17    HASHIMOTO, Kingoro's Essays.<sup>b</sup> Your attention will first  
18    of all be called~~ed~~ to the fact that publication  
19    dates of these essays are all when he was an  
20    ordinary civilian. In this regard, the defendant  
21    HASHIMOTO testifies in his affidavit as follows:<sup>c</sup>

22  
23  
24    a. Ex. 675-A

25    b. Ex. 3190-A

      c. Ex. 3195, Par. 6, Tr. 28,792.



1 "..... essays which appeared in the maga-  
2 zine 'Taiyo Dai-Nippon' were all written and pub-  
3 lished when I was an ordinary civilian. In these  
4 . . . . essays were described only my personal  
5 opinions as an ordinary civilian and they did not  
6 represent any plan or conspiracy worked out in  
7 cooperation with any other party."  
8

9 Further, the witness OGAWA, Kiichi, too,  
10 testifies in his affidavit,<sup>a</sup> ". . . his essays  
11 in the 'Taiyo Dai-Nippon' were all written after  
12 he had given up his military career and had become  
13 an ordinary civilian..."

14 Next, with reference to what the "Taiyo  
15 Dai-Nippon" was, the defendant HASHIMOTO deposes in  
16 his affidavit<sup>b</sup> as follows:

17 "21. 'Taiyo Dai-Nippon' was the official  
18 publication of the Great Japan Youth Party and then  
19 of the Great Japan Loyalty Society after the former's  
20 dissolution. Its circulation was limited to its  
21 members."

22 The witness OGAWA, Kiichi testifies in his  
23 affidavit:<sup>c</sup>  
24

- 25 a. Tr. 28,786, Ex. 3193, Par. 15.  
b. Tr. 28,798, Ex. 3195, Par. 21.  
c. Tr. 28,785, Ex. 3193, Par. 11



1 "The Dai Nihon Sekiseikai took over the  
2 management of the official news organ of the  
3 Dai Nihon Seinento -- the 'Taiyo Dai Nihon.' After  
4 the transfer of management of the Sekiseikai every  
5 effort was made to publish articles concerning  
6 increasing rice production. This also was not cir-  
7 culated outside the membership."

8 When these essays are scrutinized word by  
9 word, there is nothing to be regarded as advocating  
10 aggressive warfare, although some of them describe  
11 the necessity of war. Therefore, the prosecution's  
12 allegation that the defendant HASHIMOTO is the  
13 author of a large number of essays, all advocating  
14 aggressive warfare, is not based upon evidence.

15 3. Speeches.

16 The prosecution charges the defendant  
17 HASHIMOTO for being one who made a large number of  
18 public speeches advocating aggressive warfare, and  
19 produced in evidence the "JUMPO" (or "Every-Ten-  
20 Days Report") published by the Japanese Home Ministry.

21 According to that evidence, the date when  
22 the defendant HASHIMOTO made speeches is November  
23 1941. It is evidence from his personal history<sup>a</sup>  
24 that at that time he was an ordinary civilian.  
25

1 Even if we minutely examine the contents of  
2 the said evidence, we cannot find any parts to  
3 be regarded as advocating aggressive warfare. b  
4 The defendant HASHIMOTO states in his affidavit  
5 "While a civilian I made some public speeches, but  
6 these conveyed only my personal convictions arrived  
7 at independently and not through any plan or con-  
8 spiracy with any other persons."

9 On these grounds, I cannot but say that it  
10 is too unjustifiable for the prosecution, basing  
11 on the defendant HASHIMOTO's speeches, to indict  
12 the defendant HASHIMOTO on the charges of advocat-  
13 ing aggressive warfare.

14 CONCLUSION

15 The accused HASHIMOTO, Kingoro is a true  
16 type of traditional Japanese in whom the spirit of  
17 "bushido" is exquisitely embodied. He does not  
18 like to conceal what he did or to simulate what he  
19 did not do. In reply to the charges of the  
20 Indictment he has offered evidence in a candid and  
21 upright manner withholding nothing and adding nothing  
22 to the truth. In case any of his acts in the past be  
23 held criminal, he will be ready to receive the penalty  
24 prescribed therefore.  
25

b. Ex. 3195, Par. 7, Tr. 28,792.

Nonetheless, his firm conviction that his whole conduct in the past should in no sense be held criminal will not in the least be affected thereby. Therefore, we contend that he is free from any of the charges set out in those counts in which he is indicted.

This concludes the summation.

THE PRESIDENT: Dr. UZAWA.

DR. UZAWA: Mr. Roberts will present the summation in the individual case of the defendant OKA.

THE PRESIDENT: Mr. Roberts.

MR. ROBERTS: May it please the Tribunal,  
I will now present the summation on behalf of the  
defendant Takazumi OKA.

1.

## HIS CAREER

1. It is agreed between the prosecution and the defense that the defendant OKA was a career naval officer, who arose from the ranks after thirty-four years of service to become a vice-admiral in 1942.

2. The ordinary presumption that a man is presumed innocent until proven guilty would lead us to believe that his many years of service were responsible for his advancement, but the prosecution



1 would like this Tribunal to draw the conclusion that  
2 his promotions were proof of his share in the con-  
3 spiracy.<sup>1</sup>

4 3. This is an indication of the paucity of  
5 competent evidence to prove this defendant guilty  
6 of any of the crimes charged against him. The  
7 prosecution's case is built entirely upon inferences  
8 and assumptions based only upon positions held by  
9 the defendant, and not upon any specific acts which  
10 he performed, nor any decisions which he made, nor  
11 any orders which he formulated, or initiated, nor  
12 anything which he said, which might tend to prove his  
13 part in the alleged conspiracy to wage aggressive war,  
14 or to commit any other crime. Many such inferences  
15 are raised now for the first time only by citing some  
16 appointments listed in his personnel record.<sup>2</sup> We  
17 contend that his positions prove nothing. He must be  
18 judged by his acts alone.  
19

20 4. From the time of his graduation from the  
21 Naval Academy in 1911, OKA spent most of his time,  
22 until 1923, studying as a student in various naval  
23 schools such as the Naval Torpedo School, (junior  
24 course); Naval Gunnery School, (junior course);  
25

1. PP-4.

2. Ex. 120, T. 751-61



1 Naval College, (class B student); Naval Torpedo  
2 School, (advance course); Naval College (Class A  
3 student), in addition to acting as a member stationed  
4 in France for the research of military affairs, and  
5 an instructor in the Naval Submarine School, the  
6 Naval Torpedo School and the Naval College.<sup>3</sup> Thus  
7 his training amply fitted him for his career as a  
8 naval officer, eliminating the necessity of conjuring  
9 up any unfounded inferences to explain the reasons  
10 for his advancement.

11 5. All of the positions occupied by OKA  
12 from October, 1931 to October, 1940 were non-opera-  
13 tional functions with the exception of one year, from  
14 December 1936 to December, 1937, when he was appointed  
15 captain of the warship "JINGEI" and served on coastal  
16 patrol duty in Japan. Therefore, his work gave him  
17 no opportunity to participate in the Manchurian  
18 Incident, the Anti-Comintern Pact, and the China  
19 Incident.<sup>4</sup> Nor did his work give him any opportunity  
20 to participate in the Japanese-Netherlands East  
21 Indies negotiations, the Japan-French Indo-China  
22 Protocol, and the advance of Japanese troops into  
23 North French-Indo China, or the Tripartite Pact.<sup>5</sup>

25 3. T. 33,380

4. T. 33,382

5. T. 33,384

6. After becoming Director of the Naval Affairs Bureau in October, 1940, OKA performed the routine administrative duties connected with this department under the supervision and direction of the vice-minister, pursuant to orders of the Navy Minister.<sup>6</sup> There has not been one iota of evidence which has shown that OKA conspired or attempted to conspire with anyone, or that he committed any act or acts outside of his regular routine duties as outlined in the regulations.<sup>7</sup>

7. The assertion that OKA had great power because he had control over the Navy budget is preposterous. There is not a scintilla of evidence to show his remotest connection with the budget at any time, and it is a glaring example of a false inference without any basis in fact. The exhibits referred to by the prosecution do not support such an inference.<sup>7a</sup> The regulations provide that budgetary matters<sup>8</sup> are within the province of the Accounting Bureau.

6. T. 33,385

7. Ex. 75, T. 684

7a. PP-6

8. Ex. 75, Art. 22-24 (4), T. 684.

W  
h  
a  
l  
e  
n  
&  
M  
o  
r  
s  
e1                   II. THE MANCHURIAN INCIDENT.

2                   8. In September, 1931, OKA was a commander  
3 and a member of Section Two, Division one of the Naval  
4 General Staff. This section was concerned only with  
5 the study of armaments and had no operational functions.  
6 In October he was assigned for duty in the Naval  
7 General Staff and concurrently in the Navy Ministry,  
8 and was transferred to the Investigation or Research  
9 Section of the Navy Ministry, where he conducted  
10 studies on armaments, so that his assignment on the  
11 Naval General Staff was only nominal.<sup>9</sup> He was not  
12 engaged in the Manchurian operations at any time and  
13 there is no basis for the inference that he took part  
14 in the decision to send reinforcements to Shanghai in  
15 January, 1932. The exhibit referred to shows this to  
16 be another conjecture without basis in fact. It is  
17 the League Report which refers only to the Imperial  
18 Navy.<sup>10</sup>

19  
20                   9. The fact that OKA was decorated on April 29,  
21 1934 for meritorious service in the Manchurian Incident  
22 from 1931 to 1934 is relied upon heavily by the  
23 prosecution as conclusive proof of his participation

24 (9. T. 33, 381

25 10. P. 8, Ex. 59, T. 3289)



1 therein. At best such an assumption is no conclusive  
2 evidence of actual participation in aggressive war,  
3 especially when we note that from October 1932 to  
4 April 1934 he was working in Paris and Geneva.<sup>11</sup>

5 This weak unsupported assumption and several addition-  
6 al weaker statements form the basis for the assertion  
7 that OKA is chargeable with participation in the  
8 Manchurian Incident. It has been shown that many  
9 thousands of naval men were similarly decorated with  
10 this award which was below that made to the most  
11 meritorious.<sup>12</sup> His knowledge about the naval mission  
12 and oil from Fusan was shown to be hearsay and not  
13 as a result of his participation.<sup>13</sup> Consequently, there  
14 is absolutely no evidence showing that this defendant  
15 committed any acts, signed any orders, or participated  
16 in any operations or decisions in furtherance of the  
17 Manchurian Incident, which would even lend a shadow  
18 of support to the foregoing conclusion.  
19

20 III. ABROGATION OF THE WASHINGTON NAVAL  
21 TREATY

22 10. The defendant OKA has been mentioned by  
23 the prosecution as one of the few naval experts in the

24 (11. T. 33,381  
25 12. T. 33,380  
13. T. 33,427)

1 Japanese Navy in 1934, but it is significant to note  
2 that throughout the testimony of Admiral Richardson  
3 concerning the disarmament conference the name of  
4 OKA is very conspicuous by its absence. The prominent  
5 leaders of the discussions were mentioned as NAGANO  
6 and YAMAMOTO.<sup>14</sup> Even the prosecution has a difficult  
7 task in trying to describe OKA's status at the con-  
8 ference, because after the initial description, he  
9 is subsequently referred to as the Navy's leading  
10 expert<sup>15</sup> and later he is merely included as an es-  
11 sential member of the Navy group.<sup>16</sup> It appears that  
12 OKA was stationed in Paris and Geneva from October,  
13 1932 to April, 1934, as a research member of the  
14 Japanese Naval Delegation on the League of Nations  
15 Permanent Military Commission and as a member of the  
16 General Disarmament Commission of the Japanese Dele-  
17 gation.<sup>17</sup> Consequently, OKA was not present at the  
18 conference in June and October 1934, and was not  
19 present when Admiral NAGANO led the delegation from  
20 the London Naval Conference on January 15, 1936.

21 11. A number of inferences are laboriously  
22 drawn from thin air in the discussion of the disarmament  
23

24 (14. T. 11,181-8; 11,248

15. PP-12

16. PP-13

25 17. T. 33,381)

conferences, without a suggestion of concrete evidence  
to support them. It is inferred that a pamphlet  
written in October, 1934, concerning the 1935 Naval  
Limitations Conference was prepared with OKA's  
assistance.<sup>18</sup> This inference is drawn because of his  
position as Chief of the Disarmament Section of the  
Navy Ministry, whereas he was only actually a member  
of the Investigation or Research Section of the  
Navy Ministry. No other proof supports this assumption.  
It is again assumed that because of his position  
OKA was a member of the Navy Group that overrode  
the protests of the Foreign Office, and here also  
there is no evidence to show any possible basis in fact  
for this assumption.<sup>19</sup> It is incredible how such  
attempted inferences can be drawn in view of the  
fact that the prosecution shows that the instructions  
for a common upper limit were given jointly by the  
Navy Minister<sup>20</sup> and that Admiral NAGANO led the  
delegation from the conference.<sup>21</sup> Finally the prosecution  
assumes that because OKA was attached to the  
Navy Ministry he was one of the group that insisted  
upon expansion of naval armaments,<sup>22</sup> and reaches the

- (18. PP-12  
19. PP-13  
20. PP-12  
21. PP-13  
22. PP-17)



1 grand climax of inferences in that, "by virtue of his  
2 official position OKA played an important part in the  
3 armament of Japan." Of course, there is not a shred  
4 of evidence to support such inferences. It is only  
5 the defendant's subordinate position which is relied  
6 upon, contrary to the prosecution's statement that  
7 no man has been charged with any crime unless he is  
8 in some way responsible for the aggressive policy  
9 of Japan.<sup>23</sup> It is clearly shown that his position  
10 was never important enough to permit him to formu-  
11 late policies or participate in important decisions  
12 which were in the hands of the Navy Minister and the  
13 Naval General Staff.<sup>24</sup> From April, 1934 to December,  
14 1936 OKA was employed in the Temporary Investigation  
15 or Research Section of the Navy Ministry, and in  
16 December, 1936 began a year's service as Commander  
17 of the warship "Jingei." From January, 1938 to October,  
18 1939 he served as Chief of Section One, Naval Affairs  
19 Bureau.<sup>25</sup> This attempt to overstress the importance  
20 of the defendant who was admittedly doing research  
21 statistical work in connection with the disarmament  
22 conference is another indication of the desperation  
23 of the prosecution and its willingness to punish a  
24

25 (23. K-3

24. T. 33,405

25. T. 33,382)

1 man simply because he faithfully served in the naval  
2 arm of the enemy services. This Tribunal can almost  
3 take judicial notice of the fact that a subordinate  
4 in a section of the Naval Ministry could not possibly  
5 be responsible for the important policies formulated  
6 during the Washington Conference. It is likewise  
7 evident that the actual decision to construct battle-  
8 ships and cruisers was not participated in by OKA,  
9 and there is no proof of his suggested connection  
10 therewith. It also appears that the attempt to assume  
11 OKA's participation in the policy of refusing infor-  
12 mation about naval construction in February, 1938  
13 is wholly without foundation. His connection with  
14 the Armament Section dates only from January 15, 1938  
15 and then it was only in a subordinate capacity, so  
16 that the prior existence of such a government policy  
17 cannot be attached to him in any manner. <sup>26</sup> We repeat,  
18 his positions prove nothing!

19  
20 IV. FORTIFICATION OF THE MANDATED ISLANDS.

21 12. Here again the prosecution relies upon  
22 certain presumed positions occupied by the defendant  
23 OKA as proof of the fact that he was responsible for  
24 the fortification of the Mandated Islands. Not a  
25 single specific act is set forth to substantiate  
(26. T. 33,382)

1 this contention and the recital of all the positions  
 2 occupied by OKA from January 1938 through October 1940  
 3 fails to support any such contention. As a matter  
 4 of fact, the evidence referred to by the prosecution  
 5 as proof of the fact that OKA was personally respon-  
 6 sible shows exactly the contrary to be true.<sup>27</sup> The  
 7 witness YOSHIDA stated that his duties were concerned  
 8 exclusively with matters relating to naval facilities  
 9 and equipment including planes, ships and the defense  
 10 installations on the Mandated Islands. He further  
 11 stated that it was the opinion of the Naval Affairs  
 12 Bureau that no fortifications could be built because  
 13 of treaty restrictions and that no such action was  
 14 taken.<sup>28</sup>

15 13. Considerable testimony to the same  
 16 effect was adduced through the witnesses: Venecker,<sup>29</sup>  
 17 SHIMADA<sup>30</sup>, TAKEGAWA<sup>31</sup>, HAYASHI<sup>32</sup>, KONDO<sup>33</sup>, OHARA<sup>34</sup>,  
 18 NISHIRO<sup>35</sup>, GOTO<sup>36</sup>, SUZUKI<sup>37</sup>, IWASAKI<sup>38</sup>, and WAKAMATSU<sup>39</sup>.

19 14. It affirmatively appears from the  
 20 prosecution summation itself that Section Two of the

21 (27. PP-19

22 28. Ex. 2990, T. 26,468

23 29. T. 26,557 et seq.

30. T. 34,667

31. T. 26,505 et seq.

32. T. 26,491 et seq.

33. T. 26,495 et seq.

(34. T. 26,499 et seq.

35. T. 26,716 et seq.

36. T. 26,517

37. T. 26,511

38. T. 26,524

39. T. 26,552 et seq.



1 Naval Affairs Bureau handled matters of national  
2 defense and international conventions.<sup>40</sup> At no time  
3 prior to October, 1940, did OKA had any connection  
4 with this section and thereafter it was under a sub-  
5 ordinate. Consequently, there is no evidence of  
6 any action taken by him with respect to the Mandated  
7 Islands.

8 15. It is also significant to note that in  
9 the summary of evidence, referred to at the close of  
10 the prosecution's case on January 16, 1947, no sug-  
11 gestion was made that OKA was considered responsible<sup>41</sup>  
12 for the alleged fortification of the Mandated Islands.  
13 That charge is made for the first time in this sum-  
14 mation. In addition thereto, it is obvious that  
15 subordinates in a department of the Navy Ministry  
16 or even heads of various departments cannot act  
17 independently of the Navy Minister, and their per-  
18 formance of routine procedure cannot be characterized  
19 as acts of aggression,<sup>42</sup> especially when all his  
20 acts are subject to the approval of his superior.

21 16. It has not been shown that the defendant  
22 OKA issued any orders or gave any directions for the  
23 fortification of the Mandated Islands and he cannot  
24

25 (40. PP-19, Ex. 75, T. 684

41. T. 16,968-78

42. T. 33,386)

be held responsible in the absence of proof to that effect. It may also be noted that such matters of construction may be properly within the province of the Engineering Construction Office of the Navy, according to the Naval Organization Chart.<sup>43</sup> This chart also serves to graphically illustrate the vast division of detailed responsibility and the minor role assumed by one bureau in this vast naval setup.

V. GREATER EAST ASIA

17. The prosecution again cites the appointment of the defendant OKA to a number of committees as proof of his participation in military aggression in China and the South Seas. Again, we have no specific acts of this defendant which might support this assumption. It is supposedly proven by the mere assertion that he occupied various subordinate positions.<sup>44</sup>

18. Great pains are taken to conclude that certain committees and boards were created for the economic exploitation of Greater East Asia, and then the further conclusion is drawn that simply because of appointment to these committees and boards OKA must share the responsibility for such economic exploitation. It is not alleged that economic

(43. Ex. 2981, T. 26,415

44. PP-28)

exploitation is, in itself, a crime. However, it  
 1 is erroneously inferred that his appointment to  
 2 these committees was illogically outside his regular  
 3 routine duties thus unjustly characterizing him as  
 4 a wholehearted supporter of military aggression.<sup>45</sup>

19. The foregoing unsupported conclusions  
 6 will be answered briefly by referring to the evidence  
 7 which proves that the appointments referred to were  
 8 regular routine appointments which usually accompanied  
 9 the office rather than the individual. From the  
 10 time he served as Chief of Section One in January,  
 11 1938 until July, 1944, he was named as secretary of  
 12 a number of committees and boards for the purpose of  
 13 carrying on liaison work with other ministries. As  
 14 a practical matter, he did not and could not personal-  
 15 ly attend all the meetings of these committees and  
 16 it has been irrefutably shown that he seldom attended.<sup>46</sup>

18 Many of the committee names show them to be liaison  
 19 committees.<sup>46a</sup> The same situation prevailed with  
 20 regard to councils upon which he was appointed as a  
 21 member, and it has been shown that important matters  
 22 pertaining to state policy were never deliberated at  
 23 these meetings.<sup>47</sup> The mere routine appointment to a

(45. PP-28  
 46. T. 33,418

(46a. Ex. 120, T. 756-9  
 47. T. ee,418)



1 number of committees cannot be considered as evidence  
2 of illegal action taken on the part of this defendant,  
3 either aggressive or otherwise. The witness HOSHINA  
4 gave a detailed explanation of the actual operation  
5 of the Naval Affairs Bureau in its liaison work  
6 through many official committees.<sup>48</sup> He stated:<sup>49</sup>

7 "Because there were so many committees, with  
8 the exception of important committees which chiefs  
9 of bureaus and sections themselves attended, in most  
10 cases the principal persons within the bureaus attended  
11 these committee meetings, so it was not often that  
12 OKA attended in person."

13 Then follows a number of concrete examples.<sup>50</sup>

14 20. With respect to the assembly of the  
15 Greater East Asia Conference in November, 1943, the  
16 witness SHIBA testified that OKA was only one of the  
17 attendants and took no part in the proceedings.<sup>51</sup>

18 There is no evidence of any active participation by  
19 the defendant in these proceedings and the fact that  
20 he was present in a subordinate capacity with his  
21 superior should suffice as self-explanatory.

22 21 The example cited concerning the part

23 (48. T. 33,307-19

24 49. T. 33,307.

25 50. T. 33,308 et seq.

51. T. 33,322)

1 played by OKA in a meeting of the Investigation  
2 Committee of the Privy Council on October 20, 1942  
3 is, likewise, self-explanatory and wholly confirms  
4 the contention of the defense.<sup>52</sup> It shows that he  
5 imparted some information in his capacity as ex-  
6 plainer and that his superior was present and then  
7 spoke on policy.<sup>53</sup>

8           22. The evidence is uncontradicted that  
9 this defendant was never in a position to formulate  
10 policy or to influence decisions made on high govern-  
11 ment level. Thus we have no proof of any acts or  
12 conduct which could reasonably lead to any conclusion  
13 except that of performance of subordinate routine  
14 duties, as required by his superiors and by the  
15 naval rules and regulations. Consequently, the  
16 suggested inferences raised by the prosecution must  
17 be rejected as having no basis in fact.  
18

19  
20  
21  
22  
23 (52. PP-25

24 53. Ex. 687, T. 12,093-4)  
25

## VI.

POLITICAL ACTIVITY

1  
2 23. The attempt by the prosecution to point  
3 to political activity on the part of OKA, beyond his  
4 regularly assigned duties, fails miserably. When  
5 carefully analyzed, this so-called political activity  
6 is reduced to a few meetings in June 1938 with KAGESA,  
7 a member of the Military Affairs Bureau, who was an  
8 expert on China, and KISHI, secretary to Premier KONOYE.  
9 The record discloses that the purpose of these meet-  
10 ings was to hear explanations and reports with regard  
11 to China, and it was then the duty of OKA to report  
12 to the vice minister and the Chief of the Naval Affairs  
13 Bureau.<sup>54</sup> Thus, the attempted inference of unofficial  
14 activity in an unnamed group is unfounded and not sup-  
15 ported by any evidence.  
16

17 24. Similarly, the attempt to prove that  
18 OKA entered into an agreement, or held a conference  
19 with KAGESA on August 30, 1938 to discuss plans for the  
20 capture of Canton does not succeed when we examine the  
21 document.<sup>55</sup> OKA explained it correctly on cross-  
22 examination when he stated:  
23

24 "If you glance through the contents, you  
25 will note that this is nothing more than

54. T. 33,528

55. Ex. 3874, T. 37,433



1 information heard. This is only my presump-  
2 tion, but it appears to me from this document  
3 that KAGESA merely imparted information with  
4 regard to the decisions made by the War Minis-  
5 try and that this is a record of the report  
6 made by him; but, I am totally unfamiliar -- I  
7 was then and even now am totally unfamiliar  
8 with the operational conditions at that time  
9 and because of that I cannot say whether the  
10 contents of this document are true or false." 56

11 This description is borne out when the document is  
12 itself examined. It bears only the stamp of the  
13 Chief of the First Section East Asia Bureau and begins:

14 "The statement of KAGESA and OKA -- is as  
15 follows:" In other words, someone is allegedly  
16 reporting a statement supposedly emanating  
17 from the two section chiefs. The document  
18 refers to conferences between the Army and Navy  
19 on plans for the capture of Canton, then cites  
20 some of the difficulties encountered and closes  
21 with this observation: "However, it is believed  
22 probably that either the Army and Navy Ministers  
23 will discuss the matter privately with the For-  
24 eign Minister or that it will be decided by the  
25

## Five-Ministers' Conference."

1 Hence it is not a conference between OKA and KAGESA,  
2 as suggested, nor does it represent any action taken  
3 by anyone. It certainly is far removed from the  
4 description given by the prosecution as a conference  
5 to consider plans by two section chiefs to capture  
6 Canton.<sup>57</sup>  
7

8 25. The prosecution then repeats the positions  
9 occupied by OKA on a number of liaison committees in  
10 his capacity as Chief of Section One, and subsequent-  
11 ly as Chief of the Naval Affairs Bureau, and points  
12 to these committee positions again as conclusive proof  
13 of his political activity. It refers to the Committee  
14 for Liaison with the conference of the Five Ministers,  
15 wherein it is shown by the exhibit itself that the  
16 Five-Ministers' Conference appointed certain office  
17 holders as committee members and secretaries so that  
18 the appointment accompanied the office.<sup>58</sup> Again, there  
19 is no evidence of any action or participation outside  
20 the mention of this regular functional appointment,  
21 which does not support any inference of the commission  
22 of illegal political activities. At most, such com-  
23 mittee appointments would provide conduits for the  
24 execution of policies formulated by the government,  
25

57. PP-30

58. Ex. 3457, T. 37,365

1 which is the only logical conclusion that can be in-  
2 ferred.

3           26. With respect to OKA's receipt of a de-  
4 coration from the Nazi Government in February 1940,  
5 the prosecution admits that it does not prove his  
6 participation in the Tripartite negotiations, obviously  
7 because he was in no position to do so, but weakly  
8 suggests that it proves he was favorably disposed to-  
9 ward Germany. That is another assumption unsupported  
10 by any evidence. When it was suggested on cross-  
11 examination that he might have received that decoration  
12 for possible services in connection with the Anti-  
13 Comintern Pact, OKA stated that he had nothing to do  
14 with that Pact, and frankly admitted he did not know  
15 why he had been given the decoration.<sup>59</sup> In so far as  
16 his appointment on the Military Commission in 1941  
17 under the Tripartite Pact is concerned, it is obvious  
18 from the memorandum setting up the commission that  
19 he was not a regular member charged with the task of  
20 executing the Pact. This was entrusted to a General  
21 Commission consisting of the Imperial Japanese Minister  
22 for Foreign Affairs, the German Ambassador and the  
23 Italian Ambassador. The memorandum then provided  
24 as follows:  
25

59. T. 33,453



1 "The military and economic commissions con-  
2 vene either upon invitation from the appertain-  
3 ing general commission, or when the necessity  
4 arises to discuss questions which come up. In  
5 each case they will submit their proposals to  
6 to the general commission." <sup>60</sup>

7 27. As a matter of fact, OKA testified that  
8 he performed no actual services on the Military Com-  
9 mittee and only two perfunctory meetings were held  
10 at which time a written report was read explaining  
11 past events in the war. <sup>61</sup> This is confirmed by the  
12 testimony of Kretschmer. <sup>62</sup>

13 28. It is regrettable that much time and  
14 paper must be consumed in endeavoring to reply to the  
15 assumptions and conclusions based on mere committee  
16 appointments and the constant repetition of those  
17 appointments is really deplorable. We do not propose  
18 to repeat the statements heretofore made concerning  
19 these committees, except to assert that the additional  
20 attempted conclusions are, likewise, unsupported by  
21 any evidence.  
22

23 29. In a further attempt to show OKA's  
24 political activities were outside his regular duties,

25 60. Ex. 539, T. 6,420

61. T. 33,417

62. Ex. 2751, T. 24,616

the prosecution again proves the contrary to be true  
 in the two references made concerning TOYODA and  
 YONAI.<sup>63</sup> The record shows that he made a report  
 under orders from Minister OIKAWA who approved of  
 TOYODA as Minister of Commerce and Industry, and that  
 he was actually carrying out the orders of his superior.<sup>64</sup>  
 The same thing is admitted to be true when he acted  
 under orders from Minister NOMURA to sound out YONAI  
 as a prospective cabinet member.<sup>65</sup> Former Minister  
 OIKAWA also testified that OKA acted only under or-  
 ders.<sup>66</sup> Consequently, the attempt to infer political  
 power and activity outside his regularly assigned  
 duties is unfounded and wholly unwarranted.

# VII.

## ATTENDANCE AT IMPERIAL AND LIAISON CONFERENCES AND INVESTIGATION COMMITTEE MEETINGS OF THE PRIVY COUNCIL.

30. It is unquestioned that OKA attended the  
 Imperial and Liaison Conferences and Investigation  
 Committee meetings of the Privy Council, but never as  
a member. It is also undisputed that he could not vote  
 at said conferences or meetings and could not even take  
 part in the discussions in order to express his opinions.

63. PP-36-37

64. Ex. 3216-A, T. 29,176

65. T. 33,348

66. T. 33,340

1 When called upon to give information on matters involv-  
2 ing the Navy, he was permitted to make the necessary  
3 explanation. A clear, concise and uncontradicted  
4 account of OKA's status at the aforementioned con-  
5 ferences and meetings was given by former Navy Minister  
6 OIKAWA in the following testimony:

7 "OKA attended the Liaison Conferences in the  
8 capacity of 'Kanji' or Secretary, but was  
9 'Jimukan' or Official Clerk of the Conference,  
10 and not a member of the Conference. Therefore,  
11 he did not affix his signature to matters taken  
12 up at the Conference. In the capacity of Sec-  
13 retary, OKA could only make explanations at the  
14 Conference when he was asked to do so by a mem-  
15 ber of the Conference. He had no part in the  
16 discussion, and he had nothing to do with the  
17 making of any decisions whatsoever. His primary  
18 duty was to supply information to the members  
19 when called upon to do so.

20 "OKA likewise usually attended the Imperial  
21 Conferences with the Navy Minister is not or-  
22 dered to go elsewhere. His presence at the  
23 Imperial Conference gave him no right of ex-  
24 pression or voting, and he had no voice at the  
25 Conference.



1 "OKA, as Director of Naval Affairs Bureau,  
 2 attended the meetings of the Investigation Com-  
 3 mittee of the Privy Council as 'explainer' only  
 4 when investigation involved matters pertaining  
 5 to the Navy, he was never permitted to express  
 6 himself or vote at such meetings, and could  
 7 not take part in the decisions which were ar-  
 8 rived at. It was his duty to present data which  
 9 was required by the Navy Minister when he spoke  
 10 at such meetings. There were also 'explainers'  
 11 from other Ministers, who attended these meetings,  
 12 but their presence did not affect the decisions  
 13 reached at such meetings. The preparation of  
 14 the agenda for these meetings was prepared by  
 15 the Privy Council itself, and OKA, as the Direc-  
 16 tor of Naval Affairs Bureau, did not attend the  
 17 meetings of the Privy Council."<sup>67</sup>

18 31. The testimony of the defendant TOJO<sup>68</sup> and  
 19 OKA's own testimony<sup>69</sup> fully corroborate the fact that  
 20 OKA could not participate in the discussions or de-  
 21 cisions arrived at during the foregoing conferences  
 22 and attended only in a subordinate capacity, accompanied  
 23 by his superior. The witness YAMAMOTO, Kumaichi

25 67. T. 33,339-40  
 68. T. 36,498  
 69. T. 33,412-3

1 testified that the work of the secretaries was the  
 2 gathering and preparation of subjects for discussion  
 3 at the Liaison Conferences, and also the summing up  
 4 of subjects already discussed at the Liaison Confer-  
 5 ences. He also stated that the secretaries could  
 6 not express their own opinions.<sup>70</sup> The exhibits also  
 7 verify that he attended only as an explainer or expos-  
 8 itor.<sup>71, 72, 73, 74, 75</sup> The attempt of the prosecution  
 9 to still infer that OKA's attendance gave him some  
 10 share in the responsibility for decisions reached is  
 11 thus contrary to all the facts and the evidence. The  
 12 exhibits referred to by the prosecution will be con-  
 13 sidered briefly in order to remove all possible doubts.

14 32. The reference to the certificate from the  
 15 Japanese Central Liaison Office as proof of the fact  
 16 that OKA was not present as an explainer, but that he  
 17 participated in the discussion,<sup>76</sup> is mystifying because  
 18 the certificate says: "For the purpose of giving  
 19 explanations."<sup>77</sup> The allusion to the Investigation  
 20 Meeting of October 20, 1942<sup>78</sup> also shows a question  
 21 was asked and OKA explained what areas were in charge  
 22 of the Navy. It also shows his superior was present

24 70. T. 26,160

25 71. Ex. 649, T. 7069

72. Ex. 1241, T. 10691

73. Ex. 1265, T. 11,304

74. Ex. 1275, T. 11,364

75. Ex. 687, T. 7,421

76. PP-40

77. Ex. 1107, T. 10,140

78. PP-40

79  
and spoke on policy.

1           33. In referring to the Investigation Com-  
2 mittee Meeting of July 28, 1941, the prosecution en-  
3 deavors to infer that OKA participated in the decision  
4 when all members signified their unanimous consent by  
5 standing up.<sup>80</sup> An examination of the exhibit shows  
6 that he was not listed as a member. The Navy Minister  
7 was listed as a member. When a vote was called by the  
8 Chairman, the record then states: "(all members  
9 stand up)."<sup>80a</sup>  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

23 79. Ex. 687, (p.16) T. 12,070

24 80. PP-41

25 80a. Ex. 650, (p.7) T, 7074



S  
D  
r  
a  
t  
t  
&  
L  
u  
d  
a

34. The alleged contradiction pointed out by the prosecution concerning OKA's attendance at meetings without his superior may be due to an unintentional misconstruction. OKA testified that he was never present at Liaison Conferences without his superior and pointed to the testimony for verification.<sup>81</sup> The subsequent statement that he attended committee meetings only in the company of the Navy Minister as "explainer" in order to submit materials which he needed was obviously not intended as the same thing -- nor is it important when we note that at neither of the committee meetings referred to is it shown that OKA took any part therein.<sup>82</sup>

35. The additional references to the Liaison Conferences corroborate OKA's status as an aide to the Navy Minister, and that he was never in a position to formulate policies or participate in decisions of the conferences. Again he is shown at most to have occupied the status of a conduit to execute and carry out the decisions of his superiors.

#### VIII. FRENCH INDO-CHINA.

36. On October 15, 1939, until October 15, 1940, OKA served as Chief of the Third Division, Naval General Staff, which division had charge of gathering

81. T. 33,412.

82. T. 12, 094; T. 11,364.

1 and investigating military intelligence and was not  
2 concerned with operations or current problems. There-  
3 fore, he did not participate in the Japanese-French-  
4 Indo China Protocol.<sup>83</sup> Nevertheless, the prosecution  
5 for the first time in this trial attempts to charge  
6 OKA with the responsibility for the advance into Indo-  
7 China.<sup>84</sup> This charge is made in a mass of contradictions,  
8 erroneous assumptions, and unsupported conclusions.

9 37. Again it is by virtue of his official  
10 position as Chief of the Third Division and a member  
11 of the Naval Staff in Imperial Headquarters which  
12 supposedly determines his responsibility. Exactly  
13 how he is responsible is not clear, except that he was  
14 connected with military intelligence and must have set  
15 up a naval espionage organization, which was supposedly  
16 functioning a year later in October 1941.<sup>85</sup> The exhibit  
17 referred to mentions several espionage organizations<sup>86</sup>  
18 but does not show when they were set up or by whom.  
19 It is evidently somebody's guess that OKA was respon-  
20 sible, but not a very accurate one. Why OKA was not  
21 cross-examined on this charge is indeed very strange  
22 unless, of course, it merely appeared as an afterthought.  
23 It was not mentioned in the summary at the close of  
24

25 83. T. 33,384.  
84. PP-51.

85. PP-51.  
86. Ex. 1325, T. 11,885.

87

the prosecution's case.

1           38. The prosecution admittedly knows that  
2 the person who represented the navy in the plan to  
3 secure the cooperation of French Indo-China between  
4 October, 1939 and October, 1940 was ABE, Katsue, Chief  
5 of the Naval Affairs Bureau.<sup>88</sup> This witness testified  
6 at length concerning the part played by him in con-  
7 junction with the Naval General Staff in making arrange-  
8 ments to occupy French Indo-China.<sup>89</sup> In view of OKA's  
9 previous statement (supra) that he had no connection  
10 with operations, it is difficult to understand the  
11 prosecution's assumption, which attempts to make much  
12 of his position also as a member of the Naval Staff  
13 in Imperial Headquarters. This, however, was only a  
14 nominal title and his work in the gathering and inves-  
15 tigation of military intelligence remained unchanged  
16 until October 1940. OKA testified that he never  
17 attended a conference at Imperial Headquarters and never  
18 served therein.<sup>90</sup> Additional evidence on this point  
19 appears elsewhere herein.<sup>91</sup>

21           39. The additional committee appointments  
22 referred to by the prosecution are exactly in the same  
23 category as the previous committee references and again

25 87. T. 16,968-76.  
88. PP-49.  
89. T. 26,871.

90. T. 33,415.  
91. Para. 42.



1 infer no responsibility or action taken therein. There  
2 is no evidence which contradicts the affirmative  
3 statement that OKA could not and did not actually serve  
4 on all the committees to which he was perfunctorily  
5 appointed,<sup>92</sup> nor would such service be any proof of  
6 planning or formulating the policies which may have  
7 been referred to special committees for study.

8 40. The attendance by OKA at certain Liaison  
9 and Imperial Conferences wherein policies were adopted  
10 towards Indo-China and Thailand, does not infer any  
11 responsibility on his part in view of the previous  
12 proof of his status at such conferences (supra).  
13 Consequently, no additional reply is deemed necessary  
14 to the remaining conferences referred to and the alleged  
15 inferences raised thereby. Also, the fact that his  
16 personnel chart sets forth his appointment as a follower  
17 to the Imperial Commissioner arbitrating the dispute  
18 between Siam and Indo-China does not prove that he  
19 participated therein. This is a mere conjecture which  
20 again has been raised in the summation for the first  
21 time.

22 41. The prosecution continues its highly  
23 imaginative and absurd attempts to have the court infer  
24 that OKA planned and executed the invasion of Indo-China,  
25 92. T. 33,307-08.

1 then shares responsibility for the Imperial Headquarters  
2 decision to resort to arms and finally because of his  
3 position must have done it. In April, 1941, OKA was  
4 Chief of the Naval Affairs Bureau which was not involved  
5 in operations. Because he also had the nominal title  
6 of aide to the Navy Minister in Imperial Headquarters,  
7 the prosecution thereby assumes without any proof that  
8 he participated in the operational decisions of  
9 Imperial Headquarters.<sup>93</sup> However, Minister OIKAWA  
10 testified that OKA never attended any of the con-  
11 ferences of Imperial Headquarters.<sup>94</sup> This nominal title  
12 was also explained by several other witnesses.<sup>95</sup>

13 42. The publication of a pamphlet by the  
14 Planning Board in April 1941 setting forth the funda-  
15 mental principles of Japan's population policy as  
16 decided by the cabinet is next foisted upon OKA because  
17 of his designation as a councillor of the Planning  
18 Board.<sup>96</sup> The fact that he was not a member of the Plan-  
19 ning Board and could not take part in its decisions  
20 does not appear to be important. There is no proof  
21 that he ever knew of the existence of such a pamphlet,  
22 or performed any acts in the capacity of a councillor.  
23 Here again the charge is made for the first time in  
24

25 93. PP-57.

94. T. 33,341.

95. Ex. 2980, T. 26,423; Ex. 3565, T. 34,676.

96. PP-58.

the summation.

1           43. After citing a few more Liaison and  
2 Imperial Conferences and Privy Council meetings and  
3 the decisions reached with respect to French Indo-  
4 China, the prosecution then concludes that OKA must  
5 have been responsible for sharing in all these plans  
6 and decisions because of his positions as Chief of  
7 Section Three and Chief of the Naval Affairs Bureau.<sup>97</sup>  
8 To draw such inferences in the light of the actual  
9 evidence is to disregard all intelligent reasoning  
10 and to substitute fiction for logical facts.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

97. PP-64.



## IX.

NEGOTIATIONS WITH THE UNITED STATES.

1  
2 44. The proof is overwhelmingly to the  
3 effect that the navy was opposed to war against the  
4 United States and Britain, and took all steps con-  
5 sistent with its obligation as a branch of the  
6 fighting services to express and support that position.  
7 It has been shown through the testimony of the former  
8 Navy Minister during the negotiations in 1941, that  
9 the navy endeavored to avoid war with the United  
10 States and that OKA consistently supported this view.<sup>98.</sup>  
11 He asserted OKA's position in the following words:  
12 "I had many conversations with OKA concerning the  
13 Japanese-American negotiations and he expressed  
14 himself strongly in favor of continuing such negotia-  
15 tions."<sup>99.</sup>  
16

17 45. It is incontrovertible that OKA was in  
18 complete sympathy with the stand taken by Navy  
19 Minister OIKAWA in favor of the successful conclusion  
20 of the Japanese-American negotiations, and that he  
21 exerted all his efforts to that end. Besides the  
22 testimony of his superior referred to above, we also  
23 have the testimony of the men who worked under OKA at  
24  
25 98. Ex. 3470, T. 33341-3.  
99. T. 33343.

the time of the negotiations. The witness TANAKA,  
Toshitane, testified that: "OKA exerted his efforts  
to the best of his ability with the idea of avoiding  
war with the United States."<sup>100.</sup> He then described  
in detail the affirmative steps taken by OKA in his  
drive to support the negotiations and described OKA's  
viewpoint on the question of the removal of the troops  
from China in these words: "With respect to the  
difficult point on the American-Japanese negotiations  
involving the question of the withdrawal of troops  
from China, OKA stated that he favored their with-  
drawal so that the China Incident would be settled  
promptly so that Japan should not plunge into war  
with the United States, and he exerted his best  
efforts to avoid such war."<sup>101.</sup> He further testi-  
fied that OKA was greatly enthused over the proposed  
Roosevelt-KONOYE meeting and made secret arrangements  
to have a ship prepared for the delegation.<sup>102.</sup> It  
further appears that OKA was tentatively selected by  
Navy Minister OIKAWA as one of the members of the  
suite to accompany KONOYE, "because of his intense  
interest in the negotiations."<sup>103.</sup> According to the

100. T. 33366, lines 1-3.

101. T. 33368.

102. T. 33367.

103. T. 33341.

witness SHIBA when the negotiations broke down in  
104.  
November 1941 OKA actually shed tears.

46. The defendant OKA testified that  
Navy Minister OIKAWA held high hopes that the  
American-Japanese negotiations would be concluded  
and averted everything in his power to that end.  
He stated further, "As director of the Naval Affairs  
Bureau, I had charge of the routine handling of this  
matter in the Navy Ministry and exerted my best  
efforts towards the successful conclusion thereof." 105.

OKA further testified on redirect examination that  
Navy Minister OIKAWA advocated withdrawal of the  
Japanese troops from China and that he supported that  
view. 106.

All the foregoing evidence of OKA's posi-  
tive interest in and desire for the successful con-  
clusion of the negotiations is uncontradicted. How-  
ever, the prosecution attempts to minimize it by  
saying the evidence is of no value since it shows  
OKA hoped to achieve the aims of the conspiracy by  
diplomatic methods. 107. This contradictory statement  
places OKA in the position of conspiring to wage  
aggressive war by diplomatic methods!

104. T. 33321, line 14.

105. T. 33387.

106. T. 33528.

107. PP-73.



1           47. The belabored attempt to prove that  
2 this defendant exerted great influence over the  
3 formula for the Japanese-American negotiations and  
4 that he was responsible for its failure is, likewise,  
5 contrary to the facts. The real situation is factually  
6 depicted hereafter: The conversation for the readjust-  
7 ment of Japanese relations began in secret in  
8 December, 1940, between Bishop Walsh and Colonel  
9 IWAKURO and Mr. Tadao IKAWA in a private capacity.  
10 By April, 1941, the plan was taken up by the two  
11 governments and on April 8th the first tentative plan  
12 was presented by the American side, after which the  
13 Japanese side drew up a second tentative plan. 108.  
14 Mr. Hull then stated that negotiations might be con- 109.  
15 ducted with the second tentative plan as a basis.  
16 On April 18, 1941 KONOYE received a dispatch from  
17 NOMURA containing the "Proposal for Japanese-American  
18 Understanding," and he called a meeting to consider  
19 it the same night. The persons he invited to the  
20 conference were described in the following language:  
21 "The government was represented by the Premier, the  
22 Home Minister, the War and Navy Minister and also by  
23 Mr. OHASHI, Vice-Minister of Foreign Affairs. The  
24

25 108. Ex. 2866, T. 25673.  
109. Ex. 1061, T. 9866.

1 chiefs of the Army and Naval General Staffs repre-  
 2 sented the Supreme Command. Also present were the  
 3 directors of the Military Affairs Bureau of the War 110.  
 4 and Navy Ministries, and the Chief Cabinet Secretary.  
 5 In other words, the Government and Supreme Command  
 6 leaders were the participating members and the  
 7 defendant was again present with his superior in the  
 8 same capacity which he assumed at other liaison  
 9 conferences between the government and the Supreme  
 10 Command, where Navy Minister OIKAWA testified he had  
 11 no say. 111.

12 48. The proposal was adopted by the 112.  
 13 participants with certain conditions attached.  
 14 The army, navy and TERASAKI of the Foreign Office  
 15 wanted to cable "acceptance in principle" of the  
 16 proposal, but it was vetoed by OHASHI, the Vice-  
 17 Minister of Foreign Affairs, who insisted that Foreign  
 18 Minister MATSUOKA, who was then out of the country,  
 19 must first approve it. 113. Thereafter the Foreign  
 20 Minister personally revised the formula previously  
 21 referred to and it was approved by the participating  
 22 members of the conference, on the whole, at the  
 23 meeting of May 3, 1941. 114. One of the main points

24 110. Ex. 2866, T. 25695. 113. Ex. 2866, T. 25698.  
 25 111. T. 33339. 114. Ex. 2866, T. 25700.  
 112. Ex. 2866, T. 25697.

1 proposed by the Foreign Minister was deletion of  
 2 Japan's declaration not to carry on a southward  
 3 military advance. Although the demand to submit  
 4 this revised plan immediately was overwhelming, the  
 5 Foreign Minister still stubbornly refused until a  
 6 neutrality treaty was proposed. Thereafter there was  
 7 intense feeling against the Foreign Minister who  
 8 delayed sending the text of the revised proposal  
 9 until May 11, 1941, so that it was not presented by  
 10 NOMURA to Hull until May 12, 1941.<sup>115.</sup> Up to this  
 11 point it is obvious that the defendant OKA had no  
 12 part in drafting the formula or any influence in the  
 13 revision thereof as suggested by the prosecution.<sup>116.</sup>

14 49. Thereafter a counter proposal was re-  
 15 ceived from America on June 21, 1941.<sup>117.</sup> This was  
 16 considered at Liaison Conferences held on July 10th  
 17 and 12th.<sup>118.</sup> At this time the Prime Minister and the  
 18 Army, Navy and Home Ministers were opposed to the  
 19 Foreign Minister who was clearly taking a stand  
 20 against the negotiations, and at the joint conference  
 21 on the 12th the army and navy made a statement of  
 22 their opinion.<sup>119</sup> Then MATSUOKA agreed to draw up

24 <sup>115.</sup> Ex. 3655, T. 36223-5. T. 36228-29.

25 <sup>116.</sup> PP-67/

<sup>117.</sup> Ex. 1092, T. 10005.

<sup>118.</sup> Ex. 2866, T. 25745.

<sup>119.</sup> T. 25747.



1 the Japanese counter proposal upon the basis of  
2 the army and navy views and after the conference  
3 on the 12th, a meeting of the administrative repre-  
4 sentatives of the respective government departments  
5 were held to prepare the draft of the proposal in  
6 accordance with the foregoing agreement. <sup>120.</sup> This  
7 is the part referred to by the prosecution as the  
8 actual revision made by this defendant. It is clear  
9 that the interpretation offered by the prosecution  
10 that he prepared the joint statement of the army and  
11 navy and then prepared the revised formula is  
12 <sup>121.</sup> contrary to the true facts.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

120. Ex. 1115, T. 10161.  
121. PP-70.

W  
O  
L  
F

1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Roberts.

4 MR. ROBERTS: Continuing on paragraph 50:

5 It was also pointed out by the former  
6 vice-minister of the Foreign Office that the Foreign  
7 Office took the leading part in drafting the formula  
8 for the later negotiations; that all important points  
9 of policy in connection with the negotiations were  
10 decided in the liaison conferences, and that meetings  
11 with various bureau chiefs concerned with the negotiations  
12 were held by him.<sup>122</sup>

13 51. In contrast with the affirmative proof  
14 offered by the defense which clearly establishes  
15 OKA's positive efforts towards the successful conclusion  
16 of the negotiations what evidence does the prosecution  
17 offer in an attempt to prove his opposition? We have  
18 only a series of assumptions based upon his attendance  
19 at several Liaison Conferences which "presumably"  
20 considered the United States proposal,<sup>123</sup> again  
21 ignoring the fact that OKA could not participate in  
22 these decisions, from which we are asked to further  
23 conclude that he was thus opposed to making any  
24 concessions.<sup>124</sup>  
25

122. Ex. 2915, T. 25,908-9

123. PP-66

124. PP-67

1                   52. Then we have a reference to the extract  
2                   from KIDO's Diary<sup>125</sup> concerning the revision after  
3                   the meeting July 12,1941, and this is claimed as  
4                   proof of OKA's authorship despite KIDO's testimony  
5                   on direct examination that OKA did not play an important  
6                   part in the revision of the formula and was only an  
7                   assistant.<sup>126</sup> The prosecution also attempts to turn  
8                   this testimony against OKA by trying to suggest that  
9                   KIDO meant something else. Finally when OKA in his  
10                  testimony denied having any influence on the formula  
11                  for the negotiations and remarked quite logically  
12                  that a Bureau Chief could not be responsible for a  
13                  task of such magnitude,<sup>127</sup> the prosecution attempts  
14                  to turn his denial into an admission because of the  
15                  manner of his denial.<sup>128</sup> Consequently, it is respectfully  
16                  submitted that the foregoing inferences suggested  
17                  by the prosecution based upon the defendant's attendance  
18                  at certain conferences are successfully rebutted by  
19                  the evidence, and the attempted characterization of  
20                  the defendant as one of the leaders in opposing the  
21                  negotiations is contradicted by the facts.  
22

23                                   X.

24                                   PEACE TERMS WITH CHINA

- 25                   125. Ex. 1115, T. 10,161  
                  126. T. 31,237-8  
                  127. T. 33,390  
                  128. PP-71



1                   53. The belabored efforts of the prosecution  
2 to build a case against this defendant are very  
3 sharply exposed in the fantastic attempt to infer  
4 that he wrote the basic terms for settling the  
5 China Affair in collaboration with MUTO. This is  
6 one of many joint linkings of these two names in an  
7 insidious manner to imply an evil conspiratorial  
8 association by pure insinuation. It is asserted that  
9 OKA and MUTO held a conference at the official residence  
10 of the Foreign Minister and stated the terms of peace  
11 as proven by Exhibit 3456 but an examination of this  
12 document<sup>129</sup> reveals that a conference was held at  
13 the Foreign Minister's official residence which was  
14 also attended by the Directors of the Military Affairs  
15 Bureau and the Naval Affairs Bureau.<sup>130</sup> On cross-  
16 examination MUTO explained the procedure as a meeting  
17 with other authorities where they presented the views  
18 of their respective ministers. Thereafter the plan  
19 discussed (sic) was placed before the Liaison  
20 Conference for discussion and there adopted by the  
21 members to become national policy.<sup>131</sup> When we recall  
22 that OKA was not a member and had no vote at the  
23 conference of September 6, which apparently adopted  
24

25 129. T. 33,192

130. T. 33,192

131. T. 33,195

the plan, we then perceive the utter lack of evidence  
1 to support the prosecution's assumptions. OKA also  
2 properly described the document on cross-examination  
3 as follows: "I said that it appears to be a plan  
4 formulated by the Foreign Office, and that representatives  
5 of the Army and the Navy were called into consultation  
6 to discuss the plan."<sup>132</sup> Thereafter the Imperial  
7 Conference of 5 November, 1941 reached a further  
8 decision concerning disposal of the China Incident  
9 in which OKA again had no vote as a member. It is  
10 irrefutable that the inferences drawn concerning OKA's  
11 influence in the China Peace Terms are not supported  
12 by the evidence, which indicates he had no voice in  
13 the policies adopted; as a matter of fact, OKA's  
14 private views were contrary to the implications  
15 suggested by the prosecution, as he affirmatively  
16 stated on redirect examination that he supported the  
17 view of Navy Minister OIKAWA who advocated the with-  
18 drawal of the Japanese troops from China.<sup>133</sup> The  
19 witness TAKATA also testified as follows: "With  
20 respect to the difficult point in the American-Japanese  
21 negotiations involving the question of the withdrawal  
22 of troops from China, OKA stated that he favored  
23

25 132. T. 33,489

133. T. 33,528

1 their withdrawal so that the China Incident would be  
 2 settled promptly so that Japan should not plunge into  
 3 war with the United States, and he exerted his best  
 4 efforts to avoid such war."<sup>134</sup>

5 XI.

6 FALL OF THE KONOYE CABINET

7 54. Affirmative evidence of OKA's attitude  
 8 and position in favoring the continuance of the  
 9 Japanese-American negotiations during the Third KONOYE  
 10 Cabinet, is clearly set forth in his direct testimony,  
 11 and has not been contradicted in any respect.<sup>135</sup>

12 Navy Minister OIKAWA testified that the Navy did all  
 13 it could to avoid war and this sentiment among naval  
 14 circles was communicated to Premier KONOYE. He also  
 15 stated that his reason for entrusting the final decision  
 16 concerning continuance of the negotiations to the  
 17 Prime Minister was fear of disruption of national  
 18 opinion resulting in a grave internal problem.<sup>136</sup> It  
 19 is, likewise, clear that the position and policies  
 20 of the Navy were determined by Minister OIKAWA and  
 21 that the suggested influence of OKA is a gross exaggeration  
 22 of the facts.<sup>137</sup> OKA testified that the Navy remained

- 23  
 24 134. T. 33,368  
 135. T. 33,391-8  
 136. T. 33,342  
 25 137. T. 33,343



1 adamant in its position that war should be avoided  
 2 if at all possible;<sup>138</sup> further, that he was in no  
 3 position to issue any official statements on behalf  
 4 of the Navy, and his participation in the negotiations  
 5 were his official acts as liaison officer conveying  
 6 the messages of his superior.<sup>139</sup> It has been shown  
 7 nevertheless through the testimony of the Navy Minister,  
 8 that in their conversations OKA always expressed  
 9 himself strongly in favor of continuing the negotiations.<sup>140</sup>

10 55. The implication that OKA voluntarily  
 11 retained his position as Chief of the Naval Affairs  
 12 Bureau when the TOJO Cabinet was formed, to further  
 13 imply some sinister motive, is also contrary to the  
 14 evidence. It was shown that OKA remained because of  
 15 his term of shore service had another year to run,  
 16 and that it was not customary to shift those below  
 17 vice-minister upon the appointment of a new minister.  
 18 It was also shown by competent proof that he was  
 19 not permitted to resign upon the change of ministers;  
 20 that he tendered his resignation and it was refused;  
 21 that he was told by his superior to remain, and to  
 22 continue to do everything in his power to bring  
 23 about a compromise in the negotiations.<sup>141</sup>

25 138. T. 33,392

139. T. 33,394

140. T. 33,343

141. T. 33,343-4

1           56. The various references to the differences  
2 of opinion between the Premier, the Army and the Navy  
3 Ministers is very significant of the strong stand  
4 taken by each according to his own convictions.  
5 Judging from the prosecution's version of the  
6 negotiations in October, 1941 all the decisions were  
7 in the hands of Bureau Chief OKA who spoke not only  
8 for the Minister of the Navy, but ostensibly was  
9 able to overrule him. This is sheer nonsense. After  
10 the Navy Minister had already taken the position that  
11 he would leave the decision to the Premier, it is  
12 quite logical that his subordinate could not make a  
13 statement contrary to that position, nor is there  
14 any proof, as insinuated by the prosecution, that he  
15 had the power to alter that position.<sup>142</sup> The testimony  
16 of the Minister and OKA are both emphatic on this  
17 point and cannot be rebutted by mere insinuation.<sup>143</sup>  
18 Admiral OIKAWA said, "It is incontrovertible that at  
19 that time OKA was my subordinate and was in no position  
20 to make any decision on his own authority as to whether  
21 or not the Navy could wage war.<sup>144</sup> The evidence  
22 indicates that his subordinate position gave him no  
23 opportunity to participate in any political decisions  
24  
25

142. PP-81

143. T. 32,304

144. T. 33,343

1 and the observation that he did so participate as  
 2 an indication of his willingness to plunge Japan into  
 3 war is directly contrary to the facts.

4 56.<sup>a</sup> The testimony of Toshitane TAKATA,  
 5 who was OKA's subordinate at the time, is again  
 6 recalled to this Tribunal to conclusively establish  
 7 OKA's strong personal feelings against a war with the  
 8 United States.<sup>145</sup>

## 9 XII.

### 10 THE DECISION FOR WAR.

11 57. The parade of unsupported assumptions  
 12 continues with ever-increasing vigor. Next we are  
 13 invited to assume that OKA knew of the plan to attack  
 14 Pearl Harbor, because it was debated at the Naval War  
 15 College and two officers from the Naval Affairs Bureau  
 16 attended.<sup>146</sup> Of course, the prosecution neglects to  
 17 mention that this was only a war game where officers  
 18 from the Ministry acted as umpires.<sup>147</sup> The testimony  
 19 of the defendant TOJO that he and the Navy Minister  
 20 were the only persons besides the High Command who  
 21 knew of this plan, should be sufficient to rebut this  
 22 assumption.<sup>148</sup> The parade continues with a list of

24 145. T. 33,368

25 146. PP-83

147. Ex. 809, T. 11,230

148. Ex. 3655, T. 36,408



liaison conferences held in November, 1941 which made  
1 certain decisions still without any vote from OKA,  
2 and does not even hesitate to assume approval by  
3 OKA of a conversation concerning the use of military  
4 currency addressed to the minister for his approval,  
5 despite the fact that not even a reply is shown to  
6 have been made by the minister. This charge as well  
7 was not previously raised against this defendant  
8 and is implied for the first time in the summation.  
9

10 58. Similarly the attempt to connect this  
11 defendant with the plan to attack Pearl Harbor is  
12 obviously misleading and unsupported by any evidence.  
13 The mistranslation in the extract from the interrogation  
14 of NAGANO was pointed out to the court as a gross  
15 error,<sup>149</sup> as it was clear that there was no intention  
16 to include the Naval Affairs Bureau as a participant  
17 in the discussion of the YAMAMOTO Plan. Nevertheless  
18 the prosecution again refers to this mistranslation  
19 as if it were only a defense objection.<sup>150</sup> The exhibit  
20 reveals the obvious confusion between the names  
21 "Naval Operational Bureau," and "Naval Affairs Bureau."  
22 This attempt to imply knowledge under such circumstances  
23 is obviously misleading and is not cured by a later  
24

25 149. T. 10,465

150. PP-87

1 reference to some second-hand report which alleges  
 2 that the Chief of the Naval Affairs Bureau knew a  
 3 part of the plan.<sup>151</sup> It is irrefutable from the  
 4 prosecution's own evidence that the plan to attack  
 5 Pearl Harbor was conceived by Admiral YAMAMOTO, was  
 6 ordered on November 3, 1941 by Admiral NAGANO and the  
 7 details were worked out by members of the Naval General  
 8 Staff Operations Section, the Combined Fleet Operations  
 9 Staff, and First Air Fleet Operations Staff.<sup>152</sup>  
 10 This was also corroborated by the witness HOSHINA.<sup>153</sup>  
 11 That fact that this defendant may have learned about  
 12 some of the details by indirect methods certainly  
 13 cannot fix him with any responsibility for the  
 14 adoption or execution of said plan, and his attendance  
 15 at the Imperial Conferences of 5 November and 1 December  
 16 without the right to participate in the discussion  
 17 or voting is again no criterion of his responsibility  
 18 for the decisions adopted therein.

19  
 20 59. The final note to the United States  
 21 was drafted by the Foreign Office and submitted to  
 22 the Cabinet and Liaison Conference for approval.<sup>154</sup>  
 23 The prosecution again attempts to imply that OKA was

- 24 151. Ex. 809, Page 67, T. 11,230  
 25 152. Ex. 809, Page 66, T. 11,230  
 153. Ex. 3468, T. 33,305-6  
 154. Ex. 2915, T. 26,096

responsible as a participating member at the above-  
1 mentioned Liaison Conference, but the evidence shows  
2 him only present as a secretary, separate and apart  
3 from the participating members.<sup>155</sup> OKA testified that  
4 the draft was submitted to his department in the  
5 usual course of conduct, and that it was handled  
6 by his subordinates. That he felt the note was  
7 inadequate and suggested the addition of the phrase,  
8 "we reserve the right to freedom of action," to clarify  
9 it. That the suggested revision was related to Mr.  
10 YAMAMOTO of the Foreign Office, but it was not adopted.  
11 That he was informed that the note was a final note  
12 and relied upon the Foreign Office authorities because  
13 of his lack of the correct diplomatic procedure.<sup>156</sup>  
14 The facts concerning the suggested revision were  
15 corroborated by the witness, SHIBA, who was OKA's  
16 subordinate to whom the draft was referred for study  
17 and who wrote the suggested change on the draft.<sup>157</sup>  
18 The prosecution states the foregoing proof is unworthy  
19 of consideration and attempts to rebut it through  
20 YAMAMOTO's denial. However, before this point became  
21 an issue YAMAMOTO stated that the draft of the note  
22

23  
24 155. Ex. 1207-A, T. 10,509  
25 156. Ex. 3473, T. 33,400-01  
157. Ex. 3469, T. 33,322



1 was given to the various ministers who made some  
 2 suggestions and changes. <sup>158</sup> Subsequently when  
 3 questioned on cross-examination about OKA's suggestion  
 4 he admitted having several conversations with him  
 5 about the note. <sup>159</sup> Finally he denied receiving any  
 6 suggested change but on cross-examination again admits  
 7 a discussion about the wording in the note. <sup>160</sup>

8 Although this point was mentioned by OKA only for  
 9 the purpose of showing his interest in clarifying the  
 10 situation, and also how he came to feel that the  
 11 final was sufficient as an ultimatum, it has been  
 12 belittled by the prosecution only in an unsuccessful  
 13 attempt to impeach his credibility. It is uncontra-  
 14 dicted that the time and manner of delivery of the  
 15 note was entrusted to the Foreign Office and the  
 16 Supreme Command, and that OKA had no connection there-  
 17 with. <sup>161</sup> This statement was corroborated by the  
 18 defendant TOJO. <sup>162</sup> OKA testified that he heard later,  
 19 but could not recall when, where and from whom, that  
 20 the note was to be delivered one hour before the  
 21 opening of hostilities. That after the war he heard

23 158. Ex. 2915, T. 26,096

159. T. 26,156-7

24 160. Ex. 3632, T. 35,563-4

161. T. 33,402

25 162. Ex. 3655, T. 36,390-1

that the time had been changed to thirty minutes.<sup>163</sup>

1 Again the prosecution says this explanation is  
2 incredible. Why? There is not only no proof that  
3 the Naval Affairs Bureau ever participated in the  
4 foregoing consultation, but the testimony referred  
5 to above directly contradicts it, so that he would  
6 have had no more opportunity to share in this ultra  
7 top secret, than any other bureau head. Of course,  
8 it does not fit well with the prosecution case to have  
9 OKA shown without knowledge of such important information,  
10 and they proceed to build him up to fantastic heights  
11 by drawing fabulous conclusions from an alleged call  
12 to TOGO informing him about the surprise attack on  
13 Pearl Harbor. Although OKA testified that he might  
14 have told TOGO, after being informed by someone, but  
15 he could not recall doing so, the prosecution wants  
16 to conclude that this is evidence of the fact that  
17 he knew about the plan before the attack.<sup>164</sup> The  
18 evidence points one way and the prosecution points  
19 in the opposite direction.  
20  
21

22 60. A final attempt is made to prove OKA's  
23 importance by implying that he wrote the Imperial  
24 Rescript declaring war as well as the final note.<sup>165</sup>

25 163. Ex. 3473, T. 33,402

164. PP92

165. PP-95

1 This assumption again is based on an admitted erroneous  
2 interrogation of a third person, which is not admissible  
3 against this defendant. It then appears that OKA  
4 may have furnished some material for the rescript,<sup>166</sup>  
5 but that it really was prepared by the Cabinet.

6 Also, his signature was not appended to it. Consequently,  
7 the conclusion that OKA participated in preparing the  
8 Imperial Rescript, as well as the final note, is  
9 directly contrary to the evidence, and is pure wishful  
10 thinking for the purpose of providing another foundation  
11 for a final fictitious assumption that he is charged  
12 with responsibility for the decision to wage war.

13 XIII.

14 PRISONERS OF WAR

15 61. The evidence in this case has irrefutably  
16 shown that the jurisdiction concerning the handling  
17 of prisoners of war belonged to the War Ministry and  
18 the Prisoners of War Information Bureau. The details  
19 of this procedure and the regulations under which  
20 the treatment of the prisoners of war was handled have  
21 been set forth in detail elsewhere.<sup>167</sup> It has also  
22 been shown that all prisoners captured by the Navy  
23 were to be handed over to the Army and were only  
24

25 166. Ex. 3454, T. 33,125

167. General Prisoner of War Summation, Section M



considered as temporary prisoners when held under  
1 navel supervision; that at those camps the prisoners  
2 of war were placed under regulations of war based on  
3 international agreements to be treated as regular  
4 prisoners of war. It was further shown that the  
5 control of these temporary camps was in the hands of  
6 the commander-in-chief of the respective major or  
7 minor naval station, or the commander of the respective  
8 operational force. 168

9  
10 62. The witness TAKATA testified that the  
11 words, "prisoners of war" were not used in the  
12 Ordinance on Organization of the Ministry of the Navy  
13 and Regulations Pertaining to the Functions of the  
14 Navy Ministry; that liaison work in connection with  
15 prisoners of war was undertaken by Section 1 of  
16 the Naval Affairs Bureau, and Section Two acted as  
17 a reception organ handling the matter of routine. 169  
18 He further testified that it had been the practice  
19 since the Meiji Era, and there were various regulations  
20 pertaining to it, for the Navy to turn over the  
21 prisoners of war captured by it to the Army, and they  
22 were interned in the prisoners of war camp under the  
23 control of the War Minister. That regulations were

24 168. Ex. 3056, T. 27,278-79

25 169. Ex. 3065, T. 27,359

provided for the treatment of prisoners of war,  
1 which was the procedure provided for until the  
2 prisoners of war captured by the Navy were turned  
3 over the Army. That the rules of naval warfare  
4 promulgated on October 7, 1914 provided for the  
5 application of the principles of international law;  
6 that the Japanese Navy provided lectures on international  
7 law in the educational curriculum, and specialists  
8 on international law were dispatched to the fleet  
9 and gave lectures thereon. The Navy Ministry issued  
10 reference books, advisory memorandum, telegrams of  
11 warning, etc, to the various naval units in connection  
12 with international law.<sup>170</sup>  
13

14 63. It thus appears that the Navy always  
15 had a high standard of conduct for the observance of  
16 international law, and the Navy Ministry within its  
17 proper jurisdiction issued the necessary rules for  
18 the administration of prisoners of war. It further  
19 appears the the commander-in-chief of the fleet were  
20 in a position to enforce the administration of the  
21 prisoners of war on the basis of the regulations drafted  
22 by the Navy Ministry.<sup>171</sup> That matters concerning  
23 prisoners of war in the zone of operations were handled  
24 as operational matters, which were under the jurisdiction  
25

170. T. 27,361

171. T. 27,362-63

of the Naval General Staff, and the Navy Ministry<sup>172</sup>  
1 was not consulted with regard thereto.

2           64. The defendant OKA also testified that  
3 there was no special department in the Navy Ministry  
4 for the handling of prisoners of war. That in case  
5 it became impossible to immediately deliver the  
6 prisoners of war to the Army, they were interned  
7 by the naval unit in the field or by the naval station  
8 under the jurisdiction of the commanding officer of  
9 said naval station.<sup>173</sup> He further testified that the  
10 matters relating to the prisoners of war were handled  
11 by the Navy Ministry only as administrative problems,  
12 the main point being the establishment, the revision  
13 and the abolition of rules pertaining to the treatment  
14 of prisoners of war. That the drafts of these  
15 administrative problems were drawn up by various  
16 assistants to the Navy Ministry who were the chiefs  
17 of the various bureaus, being the Naval Affairs Bureau,  
18 and depending on the matters in question, sometimes  
19 the Medical Bureau and the Munitions Bureau. That  
20 matters of liaison with respect to the handling of  
21 the prisoners of war were handled by the Naval Affairs  
22 Bureau. That requests for various requirements were  
23  
24

172. T. 27,363

173. Ex. 3473, T. 33,419; T. 33,424



referred to the necessary bureau depending on the  
1 nature of the request. That the actual supervision or  
2 control of prisoners of war in battle areas was under  
3 the supreme authority of the commander of the fleet,  
4 and in the Japanese homeland the supreme authority  
5 was the commander of the naval station under whose  
6 jurisdiction the prisoners of war might be interned. 174

65. The testimony of the former Navy  
8 Minister SHIMADA was also to the effect that his  
9 jurisdiction extended only to administrative procedure  
10 relating to prisoners of war. 175 On redirect examination  
11 he testified extensively concerning the handling of  
12 prisoners of war by the Navy Ministry. He testified  
13 that it was his responsibility to issue regulations  
14 for the handling of prisoners of war in accordance  
15 with the provisions of international law. The naval  
16 commanders on the spot who happened to capture prisoners  
17 of war were responsible for handling them in accordance  
18 with regulations issued by the Minister of the Navy.  
19 The commander-in-chief of the naval force had the  
20 responsibility of nominating and supervising those  
21 who actually handled prisoners of war. He further  
22 stated that the Navy Minister was responsible for the  
23  
24

174. T. 33,426  
25 175. Ex. 3565, T. 34,669

general control or supervision of all naval personnel,  
1 but did not bear responsibility in so far as the chain  
2 of command was concerned. That the matter of transfer  
3 of prisoners was arranged after consultation with  
4 the Army authorities, but the actual transportation  
5 was the responsibility of the commander of the unit  
6 handling such transportation.<sup>176</sup> The testimony of  
7 SAWAMOTO, former Vice-Minister of the Navy was to the  
8 same effect and he also said, "It is unthinkable,  
9 therefore, that this same Ministry would have issued  
10 orders commanding the commission of atrocities or  
11 violation of recognized rules of warfare."<sup>177</sup>  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

176. T. 34,814-817

177. T. 34,612

K  
a  
p  
l  
&  
Y  
e  
l  
d  
e  
n

66. The explanation of the general control or supervision of all naval personnel is clearly distinguishable from the actual supervision over prisoners of war, and the attempt of the prosecution to spell it out as the same thing because of OKA's use of the same terms is obviously an attempt to distort the facts. 178

67. The witness YAMAMOTO, Yoshio, also corroborated the foregoing evidence in testifying that the Navy Ministry only issued directions concerning the handling of prisoners of war, and that the telegrams and correspondence relating thereto provided that supervision of the prisoners of war were to be in the hands of the Army. That with respect to the alleged atrocity on Kwajalein Island by Vice-Admiral ABE, according to the set-up in the Navy, the Navy Ministry could not give orders or instructions direct to Admiral ABE as a commanding officer on the spot, and that no such verbal orders ever came from the General Staff. He also stated that the appointment of the prison camp superintendent at the Yokosuka Naval Station was not reported to the Navy Ministry, because such a matter was within the province and jurisdiction of the commanding officer. This naval station 178. PP-99.



administered the prison camp at Ofuna. The only  
1 report received by the Navy was an administrative  
2 report on the personnel in the camp, their names,  
3 ranks, and other matters designated in the regulations  
4 pertaining to the handling of prisoners of war.<sup>179</sup> He  
5 further testified that he received no protests from  
6 the Ofuna temporary prison camp.<sup>180</sup>  
7

68. All of the foregoing evidence points to  
8 the same conclusion, that the Navy Ministry had juris-  
9 diction only in the administrative promulgation of  
10 rules and regulations relating to prisoners of war,  
11 and that the direct supervision and control was within  
12 the jurisdiction of the various commanders of the naval  
13 stations or the fleet. The command of local officers  
14 and men was under the jurisdiction of local commanders  
15 and the final responsibility lay with the commander-  
16 in-chief of the fleet, not with the Navy Ministry.  
17 For this reason any alleged acts committed in outlying  
18 islands such as Wake Island or Kwajalein, which were  
19 regarded as fields of operations, were at all times  
20 considered under the jurisdiction of the aforementioned  
21 officers in the line of command. The Imperial Ordinance  
22 concerning the organization of the fleet provides that  
23  
24  
25 179. Ex. 3066, T. 27375; T. 27382-84.  
180. T. 27384.

the commander-in-chief of the combined fleet shall  
 1 receive orders from the Ministry of the Navy only on  
 2 administrative matters.<sup>181</sup>

3 69. It was shown through the testimony of  
 4 the witness TAKATA that the Navy Ministry was never  
 5 consulted with respect to operations and particularly  
 6 with respect to submarine operations in the Pacific  
 7 War. That matters concerning prisoners of war in the  
 8 zone of operations were handled as operational matters,  
 9 not within the province of the Navy Ministry.<sup>182</sup>

11 70. It was also shown during the cross-  
 12 examination of the defendant TOJO that the highest  
 13 responsibility for administration in occupied areas  
 14 outside of the Japanese homeland lay with the commander-  
 15 in-chief of the Southern Army.<sup>183</sup> That the commander-  
 16 in-chief possessed the authority of supervising the  
 17 prisoners of war during the period of their transporta-  
 18 tion from the battle area to the prisoner of war camps;  
 19 that the Government had no responsibility for the  
 20 administration of occupied areas; that the responsi-  
 21 bility devolved on the supreme command.<sup>184</sup> He also  
 22 fixed the general responsibility over prisoners of war  
 23 under the War Minister.<sup>185</sup> The defendant OKA, likewise,  
 24

25 181. Ex. 2983, T. 26432. 184. T. 36805-07.  
 182. Ex. 3065, T. 27363. 185. Ex. 3655, T. 36412-14.  
 183. T. 36804.

testified on cross-examination that control of  
1 prisoners on territories occupied by the Navy was  
2 entirely in charge of the commander of the fleet, and  
3 that all prisoners held by the Navy were considered  
4 to be on a temporary basis. That the Navy Minister  
5 had no direct authority over the control of prisoners  
6 of war. 186

7 71. It naturally follows that any attempt  
8 of the part of the prosecution to infer that the  
9 defendant OKA by virtue of his position had juris-  
10 diction over prisoners of war is directly contrary  
11 to the evidence. There is not one iota of evidence  
12 adduced by the prosecution to support the assumptions  
13 as will be shown by an examination of the record and  
14 the exhibits referred to. It is significant to note  
15 that the prosecution refers only to testimony adduced  
16 by defense witnesses as the source of their proof  
17 against this defendant, and their attempts to construe  
18 his own evidence against him are belabored and obviously  
19 unsuccessful.  
20

21 72. The prosecution points to a nominal  
22 appointment held by the defendant as assistant to the  
23 Navy Minister in Imperial Headquarters as proof of the  
24 fact that he was responsible for the issuance of the  
25 186. T. 33522.



Imperial Headquarters Order pertaining to the Burma-  
Thailand Railroad.<sup>187</sup> This nominal appointment was

referred to previously and it was shown that the  
defendant OKA did not actually attend or ever partici-  
pate in the meetings of the Imperial Headquarters.<sup>188</sup>

In addition, the evidence is overwhelming that the  
construction of the Burma-Thailand Railroad was under  
the exclusive jurisdiction of the Army,<sup>189</sup> testimony of  
AKAMATSU, Tadaichi<sup>190</sup> and corroborated by the defendant

TOJO.<sup>191</sup> The reference to a number of incidents at  
Ofuna and certain Pacific Islands does not prove that  
this defendant ordered, permitted, had knowledge of,  
or power to curtail such incidents.

73. It is submitted that the request for  
transfer of prisoners from Wake Island to China does  
not necessarily infer much less prove that the alleged  
mistreatment was committed pursuant to orders of the  
Navy Ministry. Furthermore, it affirmatively appears  
that this transfer was handled by the mobilization  
bureau, so that this defendant was not even remotely  
concerned.<sup>192</sup>

74. The repetition of the ABE Incident on

187. PP-102.

188. Supra, para. 38, 41.

189. Ex. 475 (P8), T. 5513.

190. T. 14648.

191. Ex. 3655,

T. 36421-2.

192. Ex. 3065, T. 27366.

1 Kwajalein and the reference to the testimony of the  
 2 witness NAKAHARA, Jiro is an obvious attempt to  
 3 play upon the passions of this Tribunal in an  
 4 attempt to cover up the lack of evidence against  
 5 this defendant. The exhibits referred to in both  
 6 cases show without a shadow of a doubt that these  
 7 were operational matters under the jurisdiction of  
 8 the Naval General Staff, and that this defendant  
 9 could not have had the slightest connection with  
 10 either incident, assuming that they did occur as  
 11 alleged.<sup>193-194, 195</sup> The same thing must be true  
 12 of the reference to the First Submarine Force  
 13 Secret Order Number Two, which is an operational  
 14 order, pure and simple.<sup>196</sup>

15 75. The prosecution then attempts to prove  
 16 by further presumption that OKA must have received  
 17 some of the protests because it is alleged that copies  
 18 were received by his superior officer and his sub-  
 19 ordinate. An examination of the protests referred  
 20 to show them to be in reality a report sent in one  
 21 case concerning certain action already taken in the  
 22 field, which was solely within the province of oper-  
 23 ations so that the Navy Ministry was not involved.

24 193. Ex. 2055C, T. 15030. 195. Ex. 3065, T. 27381.  
 25 194. Ex. 3057, T. 27285. 196. T. 34623; T. 34636;  
 T. 34657.

In that case a report had gone to the Naval General Staff and a copy was sent to the Navy Ministry for reference only.<sup>197</sup> The additional reference to two letters written by the Foreign Minister to the Navy Minister in 1944 is no proof of the fact that these letters were ever shown to this defendant, who was only one of the many bureau chiefs in the Ministry. Navy Minister SHIMADA denied receipt of any protests;<sup>198</sup> the defendant also emphatically denied receipt of any protests and the only one tendered in evidence addressed to his department was dated long after he vacated that office.<sup>199</sup> The persistent attempts of the prosecution to spell out responsibility on the part of this defendant because of his nominal position in Imperial Headquarters without any evidence of specific acts to show his participation, indicates a realization of the utter lack of any competent proof of his responsibility for the mistreatment of prisoners of war. This nominal position<sup>200</sup> and his position as Chief of the Naval Affairs Bureau are cited time and again as the entire case against him.<sup>201</sup> This allegation that he is responsible because of his position is predominant in every subdivision of the prosecution's

197. Ex. 3066, T. 27379.  
198. T. 34670.

199. T. 33420-1.  
200. Supra 38, 41.  
201. PP-104.



1 summation. But the evidence has fully established  
2 that his position was never on a policy-making level.  
3 Moreover, the evidence has also shown that no policy  
4 was ever adopted by the Navy to mistreat prisoners  
5 of war.<sup>202</sup>

#### 6 XIV. CONCLUSION

7 76. It is respectfully submitted that in  
8 view of the fact that this defendant never occupied  
9 a position on high government policy-making level,  
10 that he could not and did not engage in a conspiracy  
11 with the other defendants to initiate or wage aggres-  
12 sive war. His contacts with some of the government  
13 leaders were always shown to be in the course of his  
14 official duties where he always acted in a subordinate  
15 capacity to perform the duties assigned to him, so  
16 that if any aggressive policy was adopted as alleged,  
17 he could not have participated as one of the prin-  
18 cipals. He was at all times carrying out the orders  
19 of his government. It also appears that the defend-  
20 ant could have had no opportunity or occasion to  
21 conspire with most of the remaining defendants with  
22 whom he had no official contact, in view of his testi-  
23 mony that he never met or spoke with the defendants  
24  
25 202. T. 33422; Defense summation, Section M.

KIDO, KOISO, HATA, OSHIMA, SHIRATORI, HIROTA, ARAKI,  
DOHIHARA, MATSUI, MINAMI, UMEZU and OKAWA.<sup>203</sup> Under

the rule laid down by the prosecution where no man  
has been charged with any crimes unless he is shown  
to be responsible for the aggressive policy adopted  
by Japan,<sup>204</sup> this defendant should not have been so  
charged and is entitled to complete exoneration by  
this Tribunal. Similarly in the counts charging  
conventional war crimes and crimes against humanity,  
the prosecution has laid down the rule that only those  
government leaders have been charged who either issued  
the orders or tolerated the known situation under cir-  
cumstances amounting to formulation of a policy to  
govern all the forces of Japan. Here as well, the  
defendant's tenure of a subordinate position, divorced  
from operations, gave him no opportunity to either  
formulate policy or to correct any known situation  
which his position gave him the power to control.  
Consequently, he issued no orders upon which any  
alleged crimes were based and was never indifferent  
to any known situation which he had the power to rectify.

77. It is respectfully submitted that in so  
far as the law and the facts apply herein the instant

203. T. 33400.

204. K-3.

1 case can be compared with the case of the defendant  
2 Fritzche before the Nuernberg Tribunal. In that case  
3 the defendant served also in a subordinate capacity  
4 as department head and had no control of the formu-  
5 lation of the government policies. His department  
6 was one of twelve departments in the Propaganda  
7 Ministry and he was present at daily conferences,  
8 but similarly with his superior in attendance. Of  
9 him the Court held that he was merely a conduit to  
10 the press of the instructions handed to him by his  
11 superior. It was also held that his activities could  
12 not be said to fall within the definition of the  
13 common plan to wage aggressive war. There the prose-  
14 cution also asserted that he invited and encouraged  
15 the commission of war crimes, but the Court exonerated  
16 him completely in these terms, "His position and  
17 official duties were not sufficiently important,  
18 however, to infer that he took part in originating  
19 or formulating propaganda campaigns."<sup>205</sup>

20  
21 78. We contend similarly that this defend-  
22 ant as a bureau head was never in a position to  
23 originate or formulate government policies. That  
24 all of his acts were performed in carrying out the  
25 orders of his government. That he was at all times  
205. Nuernberg Judgment, 17068-9.



1 merely a conduit for the transmission of the orders  
2 of his superiors. It is believed that the sober  
3 judgment of this Court will rise above the frenzy  
4 of the moment, so that a fair and just decision based  
5 solely on the acts of the accused will result in a  
6 complete vindication for all career service men, who  
7 serve their country with blind devotion in time of  
8 stress. We borrow an apt quotation from a great  
9 patriot who said: "He that would make his own  
10 liberty secure must guard even his enemy from  
11 oppression; for if he violates this duty he estab-  
12 lishes a precedent that will reach himself."--Tom  
13 Paine.

THE PRESIDENT: Mr. Howard.

MR. HOWARD: Mr. President and Members of  
the Tribunal:

KIM-1. In summing up the defense of KIMURA, Heitaro, we begin by quoting from that part of the Potsdam Declaration which in our submission applies to this accused: "The Japanese Military Forces, after being completely disarmed, shall be permitted to return to their homes with the opportunity to lead peaceful and productive lives."<sup>a</sup>.

KIM-2. As is explicit in his personal history,<sup>a</sup> KIMURA was not in a position to participate and actually did not take part in the events that took place over about thirteen years from 1 January 1928 to his appointment as the Vice-Minister of War, 10 April 1941, of the period of more than 17 years referred to in the Indictment.

KIM-1.  
a. Ex. 2, Tr. 17,146.

KIM-2.  
a. Ex. 113; Tr. 727; Ex. 3347.

RESPONSIBILITIES OF VICE WAR MINISTER

KIM-3. Since most of the counts in which KIMURA is mentioned are directed at the time he was Vice-War Minister, we shall discuss the responsibilities of that office.

The work of the War Ministry was conducted<sup>a</sup> in accordance with:

(a) Imperial Ordinance on the Organization<sup>b</sup> of the Cabinet;

(b) Imperial Ordinance Relating to General Rules Concerning the Organization of the Ministries;<sup>c</sup>

(c) Organization of the War Ministry;<sup>d</sup>

(d) War Ministry General Affairs Regulations;<sup>e</sup>

(a) and (b) pertained to the fundamentals affecting and applicable to all ministries, and (c) pertained to the fundamentals of conducting the works within the War Ministry. Other ministries also had ordinances corresponding to (c), for example; there was the ordinance of the Organization of the Navy Ministry<sup>f</sup> and the ordinance of the Organization of the Foreign Ministry.<sup>g</sup>

a. Tr. 31,754

b. Ex. 70

c. Ex. 73

d. Ex. 74

e. Ex. 3348; ex. 3349

f. Ex. 75; tr. 17,499

g. Ex. 76; tr. 17,503



(d) was the one regulating the main points as to how the actual phases of conducting the Ministry's work were to be carried on. There also were similar regulations in other ministries.<sup>h</sup>

We submit that, in reviewing the responsibility of a particular vice-minister to the minister, much importance should be placed upon the actual way that particular vice-minister conducted his work.

KIM-4. We, therefore, proceed first to clarify the responsibility of the Vice-Minister under the above-stated ordinances, then to elucidate some interpretations of the War Minister's General Affairs Regulations,<sup>a</sup> and finally to describe the actual situation under which Vice-Minister KIMURA attended to business during his tenure of office.

KIM-5. The functional responsibility of the vice-minister of each ministry is defined by the Imperial Ordinance Relating to General Rules Concerning the Organization of the Ministries,<sup>a</sup> and a vice-minister acted in an assisting and advisory capacity to the minister who was the head of each administrative unit;<sup>b</sup> that is, a ministry.

KIM-3. b. Tr. 31,674

KIM-4. a. Ex. 3348; tr. 31,658

KIM-5. a. Ex. 73; tr. 17,484

b. Tr. 31,671; tr. 31,803

KIM-6. There was no ordinance authorizing the vice-minister to act in an assisting and advisory capacity to the minister when the latter acted as a state minister (which was a post held concurrently by a minister who was the head of an administrative unit).<sup>a</sup>

KIM-7. Imperial Ordinance on the Organization of the Cabinet<sup>a</sup> sets out the procedure used to appoint a vice-minister a minister of state. When a vice-minister was to be directed to act in the role of a minister, such a special procedure was followed. A minister was not allowed to so designate his vice-minister on his own authority.<sup>b</sup>

KIM-8. Next we will discuss the responsibility of the Vice-Minister of War in performing the military administration as defined in the ordinances. According to the universally accepted Japanese legal interpretation of the Imperial ordinances, no one but the minister who was the head of the respective administrative unit could represent each ministry, and Article 2 of the General Rules<sup>a</sup> sets out that the minister of each ministry was responsible for the matters assigned to the ministry. The authority to issue orders, the authority on personnel matters, and the authority to

KIM-6. a. Tr. 31,671; tr. 31,803

KIM-7. a. Ex. 70; tr. 17,480; tr. 31,671; tr. 31,803

b. Tr. 31,671; tr. 31,803

KIM-8. a. Ex. 73; tr. 17,484

1 punish, rested on the Minister of War and not on the  
 2 Vice-Minister.<sup>b</sup>

3 KIM-9. The vice-minister, being an assistant  
 4 and adviser, was not responsible in any sense for his  
 5 acts to any one but the minister;<sup>a</sup> that is, in case  
 6 the vice-minister and his subordinates submitted their  
 7 opinions which were eventually adopted, such decisions  
 8 by the minister were made solely on his own responsi-  
 9 bility and authority.

10 KIM-10. Article 16 of the General Rules<sup>a</sup> states  
 11 that the vice-minister is to assist the minister in  
 12 adjusting the activities of the ministry and in super-  
 13 vising its work. Therefore the vice-minister had no  
 14 authority to control the business matters of the War  
 15 Ministry.<sup>b</sup>

16 KIM-11. Also, the following limitation  
 17 should be noted; that is, the vice-minister had no  
 18 authority to command or issue orders, no authority to  
 19 dismiss and no authority to punish as far as the bureau  
 20 chiefs were concerned.<sup>a</sup>

21 KIM-12. Each bureau chief was subordinated<sup>a</sup>  
 22 directly to the minister,

23 KIM-8. b. Tr. 14,405; tr. 31,802; tr. 31,717; ex. 74,  
 24 Art. 1; tr. 17,487; ex. 3031; tr. 27,077; tr.  
 31,718.

25 KIM-9. a. Tr. 31,802; tr. 31,718

KIM-10 a. Ex. 73; tr. 17,486

b. Tr. 31,763

KIM-11 a. Tr. 31,717; tr. 14,405; tr. 31,802

KIM-12 e. Tr. 31,716; tr. 31,672; tr. 14,406



1 and by order of the minister, managed those matters  
 2 assigned to him, and directed as well as supervised  
 3 the works of the sections and branches, and was held  
 4 responsible directly to the minister.<sup>b</sup> Bureau Chiefs had  
 5 the authority to command, to control and to punish the  
 6 members of their staffs and to keep examination records  
 7 concerning them.<sup>c</sup>

8 KIM-13. The relationship between the Minister,  
 9 Vice-Minister, and Bureau Chiefs as depicted by a chart  
 10 is shown in exhibit 3031.<sup>a</sup> This chart tends to corrobo-  
 11 rate other evidence that the Vice-Minister had no  
 12 authority to command or give orders to the bureau and  
 13 department chiefs and their subordinates of the War  
 14 Ministry and that they were directly responsible to the  
 15 War Minister.<sup>b.</sup>

16 KIM-14. Therefore, the Vice-Minister was the  
 17 one who performed the surveillance of the work in  
 18 the capacity of assisting and advising the minister  
 19 in his role of management and surveillance and the  
 20 Vice-Minister's part of surveillance did not imply  
 21 compulsory measures but merely amounted to the authori-  
 22 ty to guide or lead in performing the duties.<sup>a</sup>

24 KIM-12. b. Ex. 73, Art. 18; tr. 31,804; tr. 31,672

c. Tr. 31,804

25 KIM-13. a. Tr. 27,077

b. Tr. 31,657; tr. 31,801; tr. 31,672; tr.  
 31,716; tr. 14,406

KIM-14. a. Tr. 31,672; tr. 31,803; tr. 31,717

KIM-15. Also, it goes without saying that the  
 1 minister had the authority to command and issue orders  
 2 to chiefs of bureaus. It did not violate the regula-  
 3 tions if the chiefs went directly to the minister,  
 4 asking for his decision.<sup>a</sup>

KIM-16. The authority and responsibility of  
 5 the Vice-Minister as defined in War Ministry General  
 6 Affairs Regulations;<sup>a</sup>  
 7

8 Regulation (d) is based upon (b), ex. 73,  
 9 and (c), exhibit 74, and defines the main points as to  
 10 how the ministry's work was actually conducted, its  
 11 chief object being the activities of the chief and  
 12 their subordinates.  
 13

KIM-17. Hence, those articles regulating the  
 14 activities of the chiefs and their subordinates used  
 15 the term "the minister and the vice-minister", as these  
 16 two were the only superiors. The said terminology  
 17 seemingly conveyed the wrong impression that the two  
 18 had more or less similar authority and responsibility  
 19 in conducting the affairs. That, we submit, however,  
 20 was not the case. The said terminology simply means  
 21 that, as the vice-minister was an assistant and adviser  
 22 to the minister, reports were submitted to and inter-  
 23 changes of views were made with the vice-minister.  
 24

25 KIM-15. a. Tr. 131,719; 31,720; ex. 3368, ex. 3351, tr.  
 14,397-8

KIM-16. a. Ex. 3348

KIM-18. Article 27 of exhibit 3348<sup>a</sup> shows  
 1 that some affairs of the War Ministry were entrusted  
 2 to the decision of the vice-minister, bureau chief,  
 3 and the Senior Adjutant. Items 1 to 20 listed among  
 4 the matters entrusted to the Vice-Minister in the  
 5 Annexed List No. 1 of the Regulations Concerning the  
 6 Treatment of Business of the War Ministry<sup>b</sup> show the  
 7 only items pertaining to personnel matters and mili-  
 8 tary affairs which were entrusted to the Vice-Minister  
 9 and, which, as can be seen, were unimportant.

KIM-19. The authority to decide on important  
 11 matters rested solely in the minister, whatever case  
 12 it might have been.<sup>a</sup> Furthermore, so-called "entrusted  
 13 matters" were delegated to the vice-minister and chiefs,  
 14 etc., on the responsibility of the minister. And, as  
 15 shown in Article 27 of exhibit 3348,<sup>b</sup> while the chiefs  
 16 were empowered to re-entrust immaterial matters within  
 17 the purview of matters entrusted to them to the chiefs  
 18 of the respective sections, the vice-minister was not  
 19 empowered to re-entrust any matters to the chiefs.

KIM-20. Besides, as shown in the last para-  
 22 graph of Article 27, the one who decided on the authori-

23 KIM-18. a. Tr. 31,661

24 b. Ex. 3349; tr. 31,665

KIM-19. a. Tr. 31,754, 31,808, 31,673

25 b. Tr. 31,805; tr. 31,673; tr. 31,717; 31,754



1 ty thus entrusted was under obligation to report to  
2 his superior in appropriate time those matters which  
3 he deemed necessary.<sup>a</sup> These entrusted matters were  
4 those for which precedents were already established  
5 and in which very little discretion was admissible  
6 and the policy and the opinion of the minister left  
7 little doubt.

8 KIM-21. In the ministry the relevant bureau  
9 or section was assigned to prepare draft documents on  
10 important matters and these drafts were initiated  
11 either by the direct order of the minister or along the  
12 line indicated by the minister beforehand.<sup>a</sup>

13 KIM-22. Also, according to Article 18 of  
14 exhibit 73 and Article 10 of "Regulation Pertaining  
15 to Organizations and Functions of Departmental and  
16 Sectional Activities of the War Ministry,"<sup>a</sup> it was  
17 explicitly stated that the chiefs of bureaus managed  
18 the departmental affairs by order of the minister.  
19 For such purpose, it was usually practised that the  
20 minister from time to time indicated his policy and  
21 opinion to his subordinates, thus laying down the yard-  
22 stick for handling the affairs and he himself also

23 KIM-20. a. Tr. 31,661, 31,708

24 KIM-21. a. Ex. 3348, Art. 30; tr. 31,754

25 KIM-22. a. Ex. 3348; tr. 31,659

gave orders on important matters and had the work executed by his subordinates.

THE PRESIDENT: We will adjourn until half-past one.

(Whereupon, at 1200, a recess was taken.)

RIM-22.

b. Tr. 15907; Tr. 15,908; Tr. 31812; 31716.

G  
r  
e  
e  
n  
b  
e  
r  
g  
&  
R  
e  
i  
c  
h  
e  
r  
s

1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: With the Tribunal's permission  
4 the accused TOGO will be absent from the court room  
5 the entire afternoon session, conferring with his  
6 counsel.

7 The accused MATSUI has been returned to  
8 Sugamo Prison owing to illness.

9 Mr. Howard:

10 MR. HOWARD: Mr. President, I continue reading  
11 from page 12.

12 KIM-23. Article 30 of Ex. 3348 refers to  
13 the cases in which the opinions of the superiors  
14 were not clear with regard to the important matters  
15 on which drafts were initiated in the relevant section,  
16 and its purpose was to prevent the subordinate sections  
17 from deviating from the will of the minister. In the  
18 case above stated, the vice-minister sometimes could  
19 give his informal consent but he could do so only  
20 when the will of the minister was definitely known to  
21 him; he could never give his informal consent on his  
22 own judgment.

23  
24 KIM-24. Article 40 of Ex. 3348,<sup>a</sup> is a  
25 regulation referring to how the draft documents were

KIM-24. a. Tr. 31,662



1 signed for the final approval and how they were exe-  
2 cuted.

3 Those which needed the decision of the  
4 minister were to be forwarded to him through channels  
5 and, upon his approval, were to be executed. Such  
6 documents requiring the decision of the minister  
7 were to be channeled through the vice-minister, but  
8 as he had no authority to give the decision except  
9 in case the matter was duly entrusted to him by  
10 ordinance, the vice-minister had no authority to  
11 decide on those documents to be forwarded to the  
12 minister and the reason for having them channeled  
13 through the vice-minister was to keep him informed  
14 thereof so that he could assist and advise the  
15 minister and to get his certification that the matter  
16 met the desires of the minister as the vice-minister  
17 understood them. As to these documents, the minister  
18 was the sole authority to make any decision.

19 KIM-25. Article 41 of exhibit 3348 was a  
20 special regulation with exceptional nature referring  
21 to matters which needed urgent attention.

22 KIM-26. Article 46 of exhibit 3348 was a  
23 special regulation referring to confidential matters  
24 pertaining to personnel. These matters which fell  
25 to the assignment of the bureau of personnel and

1 were also entrusted to the vice-minister, were un-  
2 important as shown in Article 27, (item 7 to item  
3 13 in the annexed list).<sup>a</sup>

4 Actually the vice-minister adhered to this  
5 regulation so that he was not taken in consultation  
6 with regard to the important personnel affairs.<sup>b</sup>

7 KIM-27. Article 47 of exhibit 3348 re-  
8 ferred to press releases. Practically all of the  
9 matters provided for in this article were trans-  
10 ferred to the Information Department of the Imperial  
11 Headquarters or the Cabinet Intelligence Bureau and  
12 the Vice-War Minister had nothing to do with them.<sup>a</sup>

13 KIM-28. Article 51 of exhibit 3348 referred  
14 to cases where a matter once decided was to be sus-  
15 pended before its execution. As stated in Article  
16 30, the draftings of the important documents were  
17 undertaken with the previous knowledge as to the  
18 policy and opinion of the minister. Therefore, such  
19 suspension of the execution was a rarity and when so  
20 done was caused by extraordinary circumstances. Wit-  
21 ness KAWAHARA explained in detail how matters were  
22 decided and orders were issued from the War Ministry.<sup>a</sup>

23 KIM-26. a. Ex. 3349, Tr. 31,666-7.

24 b. Tr. 31,806, Tr. 31,673, Tr. 31,799.

25 KIM-27. a. Tr. 33,108.

KIM-28. a. Tr. 31,754-58.

1 KIM-29. Joint responsibility for documents  
2 drafted by the other ministries or the General  
3 Staff Office was attributable to the minister con-  
4 cerned and to no one else. That was because only  
5 the minister could represent his ministry, its de-  
6 cision was made by him on his own responsibility and  
7 those under him fixed their seals on the documents as  
8 an act of assisting the minister.<sup>a</sup>

9 KIMURA AS VICE WAR MINISTER GENERALLY.

10 KIM-30. Before discussing the actual  
11 situation of Vice-Minister KIMURA during his tenure  
12 of office, it is deemed necessary to clarify the  
13 relations between TOJO and KIMURA and discuss KIMURA's  
14 characteristics.

15 KIM-31. Before KIMURA was appointed Vice-  
16 Minister, he had been the Director of the Ordnance  
17 Bureau for about half a year in the same service  
18 with General TOJO who was Vice-Minister of War at  
19 that time. During this time, he was related with  
20 TOJO only in his duties concerning ordnance and  
21 engineering. With this exception he had never been  
22 in the same government school nor unit since he be-  
23 gan to serve in the Army. He has never had any  
24 political, ideological or personal relations with  
25 KIM-29. a. Tr. 31,761



<sup>a</sup>  
General TOJO.

1 KIM-32. The reason for KIMURA's appointment  
2 to the post of Vice-Minister of War was to have him  
3 assist the Minister in professional technical admin-  
4 istration of ordnance and harmonize all the Ministry  
5 by his sound character. His appointment has no  
6 personal, special implication in connection with  
7 TOJO.<sup>a</sup>  
8

9 KIM-33. Moreover, KIMURA hails from  
10 Saitama Prefecture, which has produced few promin-  
11 ent soldiers or seniors so he had nothing to do  
12 with military groups or cliques. Before holding the  
13 post of Vice-Minister, he led a military life, being  
14 engaged purely in artillery training, technical ad-  
15 ministration of ordnance and commanding troops. He  
16 was not interested in politics, economy, or diplom-  
17 acy, but was well versed in administration of ord-  
18 nance on land.<sup>a</sup> This is clearly indicated by the  
19 fact that after his resignation from the post of  
20 Vice-Minister in March 1943, he occupied the post  
21 of Director of Ordnance Administration Headquarters<sup>b</sup>  
22 for one year and a half.  
23

24 KIM-31. a. Tr. 31,810-11; Ex. 113, Tr. 727

KIM-32. a. Tr. 14,398; Tr. 31,811

25 KIM-33. a. Tr. 31,811

b. Tr. 31,812

1 KIM-34. There was no connection at all  
 2 between a cabinet change and the appointment of  
 3 the Vice-War Minister which was an internal affair  
 4 belonging to the army. KIMURA's remaining in office  
 5 as the Vice-Minister of the War Ministry of the  
 6 TOJO Cabinet when the KONOYE Cabinet resigned was  
 7 carried out only in accordance with precedent and  
 8 did not signify anything in particular.<sup>a</sup>

9 KIM-35. Minister TOJO was skillful and  
 10 positive.<sup>a</sup> He was well versed in military adminis-  
 11 tration and a very hard worker, endowed with special  
 12 executive ability. His most observed mottoes were  
 13 "command at the head of the column" and "simplifica-  
 14 tion and despatch of business." He personally con-  
 15 trolled and commanded the important bureau and de-  
 16 partment chiefs,<sup>b</sup> directly commanded with quick de-  
 17 cision,<sup>c</sup> and transacted all the routine work of the  
 18 Ministry with alacrity.<sup>d</sup>

19 KIM-36. Even after Minister of War TOJO  
 20 became Prime Minister, he all the more persisted in  
 21 his way of direct leadership; he never left important  
 22

23 KIM-34. a. Tr. 31,806; Tr. 31,674

24 KIM-35. a. Tr. 31,752

b. Tr. 31,812; Tr. 15,907

c. Tr. 31,716

25 d. Tr. 31,812

1 business to others, but managed it with unusual  
 2 exertions and decision.<sup>a</sup> Vice-Minister KIMURA's  
 3 scope of authorities and duties was exactly the same  
 4 as when General TOJO was War Minister only.<sup>b</sup>

5 KIM-37. When KIMURA became Vice-Minister,  
 6 most all of the bureau and department chiefs were  
 7 of long standing in their post, and skillful experts.  
 8 They transacted business promptly and properly in  
 9 accordance with the Minister's intentions.<sup>a</sup>

10 KIM-38. Accordingly, under the above-men-  
 11 tioned circumstances, KIMURA could not play his part  
 12 positively. Naturally, his efforts were chiefly  
 13 directed towards ordnance administration which was  
 14 his strong point. At the same time he tried to har-  
 15 monize the routine work of the office with a view to  
 16 enabling the skilled Minister, Bureau and Department  
 17 Chiefs display their abilities to the fullest extent.  
 18 This he accomplished.<sup>a</sup>

19 KIM-39. Moreover, Minister TOJO was really  
 20 much occupied with many kinds of miscellaneous mat-  
 21 ters besides important administration. In order to  
 22 let TOJO devote himself to more important business,  
 23 the Vice Minister attended to ceremonial and  
 24

25 KIM-36. a. Tr. 31,814 KIM-37. a. Tr. 31,812; 31,716  
 b. Tr. 31,753; Tr. 31,814; Tr. 36,497; 15,946  
 KIM-38. a. Tr. 31,811-12; 31,752; 31,716.



miscellaneous items. He, too, was kept busy.<sup>a</sup>

1 KIM-40. The Bureau Chiefs Meetings were  
2 enforced with the objective of promoting friendly  
3 liaison between the Minister, the Vice-Minister and  
4 Bureau and Department Chiefs. They were not decision-  
5 making bodies. The Minister sponsored them in name  
6 and in fact. He directed them, paying attention  
7 even to details.<sup>a</sup> In the absence of the Minister,  
8 which was rare, the Vice-Minister presided over them  
9 but it was very seldom that this happened.<sup>b</sup> KIMURA  
10 scarcely made any utterances at the Bureau Chiefs  
11 Meetings; he did not take an active part in them.<sup>c</sup>

13 KIM-41. KIMURA was neither appointed as a  
14 Minister of State nor to act officially for the  
15 Minister.<sup>a</sup> After TOJO became concurrently War Min-  
16 ister and Prime Minister, there were no changes in  
17 the status of KIMURA.<sup>b</sup> The Minister was seldom away  
18 from his office on official tours or other accounts.  
19 The duration of his tours were short. Even during  
20 his short absences the Vice-Minister never acted  
21 officially in the name of the Minister.<sup>c</sup>

22 KIM-39. a. Tr. 31,813; Tr. 31,752

23 KIM-40. a. Tr. 31,753; 31,815; 31,717. (b. Tr. 31,815

24 c. Tr. 31,717; 31,815-6; 14,385

25 KIM-41. a. Tr. 15,946; 31,806; 31,814;

b. Tr. 36,497; 14,387; 15,496;

c. Tr. 31,814; 31,753; 15,496.

1 KIM-42. Requests made by the Chief of the  
2 General Staff were first received by the Military  
3 Affairs Bureau and transmitted to the proper bureau  
4 for consideration, and afterwards reply was made by  
5 order of the War Minister.<sup>a</sup>

6 KIM-24A. Vice-Minister KIMURA, like the  
7 vice-ministers of the other departments, was appointed  
8 a committee member or a councillor on various com-  
9 mittees. But many committees of this kind were often  
10 set up in every department as customary routine and  
11 the majority of them were only nominal. KIMURA was  
12 absent from most of the committee meetings. Although  
13 he was present on rare occasions, it was really for  
14 the sake of formality.<sup>a</sup>

15 KIM-43. KIMURA did not attend even once  
16 either of the liaison conferences or the Imperial  
17 Conferences, neither did he take part in them in  
18 any way.<sup>a</sup> He did not attend conferences of the  
19 Imperial Headquarters, of the section chiefs or of  
20 the Commissariats which were held at the General  
21 Staff Office.<sup>b</sup> KIMURA had no connection in the  
22 least with the plans of operation and their enforce-  
23

24 KIM-42. a. Tr. 32,951

KIM-42A. a. Tr. 31,817; 31,675

25 KIM-43. a. Tr. 31,753; 14,404; 36,493

b. Tr. 31,753; 36,386-8; 33,415

ment.<sup>c</sup>

1 KIM-44. The business liaison with the other  
2 ministries and the General Staff Office was chiefly  
3 conducted by the Military Affairs Bureau.<sup>a</sup> Negotia-  
4 tions with the Foreign Office were handled by the  
5 Military Affairs Bureau.<sup>b</sup> The matters under the  
6 jurisdiction of the Prisoners' Control Bureau were  
7 decided mostly by the chief of that bureau.<sup>c</sup>

9 KIM-45. Investigation of the state of war  
10 prisoners and the matter of correspondence were  
11 supervised chiefly by the Prisoners' of War Infor-  
12 mation Bureau which was an organ under the direct  
13 control of the War Minister.<sup>a</sup> The bureau had a  
14 character of independence and was an outside office  
15 of the War Ministry. The chief of the bureau was  
16 under the direct command and control of the Minister  
17 and took charge of the affairs of the bureau. It  
18 was usual that all documents or correspondence going  
19 out from and coming into the bureau were handled  
20 without passing through the adjutant section of the  
21 War Ministry.<sup>d</sup>

22 KIM-43. c. Tr. 31,806; 33,106

23 KIM-44. a. Tr. 32,953; 14,407

24 b. Tr. 32,952; 14,407; 14,397

c. Tr. 31,805; 31,758

25 KIM-45. a. Tr. 14,440; 14,442

b. Tr. 14,346; 14,442; 31,759

c. Tr. 14,442 d. Tr. 31,759



1 KIM-46. The relations between the Vice-War  
 2 Minister and foreign officers consisted only of ex-  
 3 changes of formal salutations and there was no  
 4 negotiation of any official affairs between them.<sup>a</sup>

5 KIM-47. The Kempei was a special military  
 6 unit under the direct control of the War Minister  
 7 which was created by the Kempei Ordinance.<sup>a</sup> The  
 8 Vice-Minister had no control over it.

9 KIM-48. The members of "The Information  
 10 Bureau of the War Office" were under the command and  
 11 supervision of the Chief of the Military Affairs  
 12 Bureau, under the jurisdiction of the War Minister.<sup>a</sup>

13 KIM-49. The above stated facts show that the  
 14 leading power of KIMURA in the War Ministry was not  
 15 increased in a marked degree compared with that of  
 16 the Vice-Ministers of any other ministry. The actual  
 17 circumstances at that time should be clear, if witness  
 18 TANAKA, Ryukichi's statement, that Vice-Minister  
 19 KIMURA was merely a robot and also his testimony  
 20 relating to others in the War Ministry, be taken into  
 21 consideration.<sup>a</sup>

22 KIM-50. We submit that KIMURA while Vice-  
 23 War Minister was in an analagous position to a

24 KIM-46. a. Tr. 31,759; 31,656; 31,818

KIM-47. a. Tr. 31,669; 31,816

KIM-48. a. Tr. 34,440 KIM-49. a. Tr. 14,397

1 member of the Reich Cabinet, which Cabinet was dis-  
2 missed at Nuernberg as being "merely an aggregation  
3 of administrative officers subject to the absolute  
4 control of Hitler."<sup>a</sup>

5 KIM-51. Although KIMURA is charged with  
6 instigating aggressive war, the only statement  
7 attributed to him by the prosecution is, "General  
8 KIMURA, Vice-Minister of War, was not an advocate  
9 of war with the United States, and told me not on  
10 one occasion alone that if Ambassador KURUSU went  
11 to the United States a settlement could be reached  
12 between the two countries,"<sup>a</sup> There is nothing in  
13 the record other than this that shows that KIMURA  
14 was for war or against war with any country at any  
15 time. In fact, there is a dearth of evidence of  
16 statements by KIMURA of any kind in the record.

17 BURMA-SIAM RAILWAY.

18 KIM-52. The next time that KIMURA is  
19 mentioned in the record is in an opening statement  
20 by the prosecution in which KIMURA is charged with  
21 being responsible for the Burma-Siam Railway atrocities  
22 as reported in exhibit 475.<sup>a</sup> This prosecution  
23

24 KIM-50. a. Nuernberg Judgment, Page 16,963

25 KIM-51. a. Tr. 2051

KIM-52. a. Tr. 5,513

exhibit states in conclusion that "the responsibility  
 1 ought to be placed on the then Chief of General  
 2 Staff, General SUGIYAMA, who ordered the construction;  
 3 the War Minister TOJO, who sanctioned the employment  
 4 of prisoners; and the Commander in Chief of the South  
 5 Area Corps, General TERAUCHI, who was entrusted with  
 6 the construction on the spot."<sup>b</sup>

8 KIM-53. TOJO testified, "Consequently, the  
 9 treatment of the war prisoners employed in the con-  
 10 struction of the Burma-Siam Railway falls within  
 11 the jurisdiction of the War Minister. With respect  
 12 to the second category, I assume administrative  
 13 responsibility as Minister of War for the period  
 14 from the beginning of the Pacific War up to July 1944."<sup>a</sup>

15 KIM-54. Prosecution witness TANAKA, Ryukichi  
 16 testified that, "Inasmuch as the decisions to use  
 17 prisoners of war in the construction of Siam-Burma  
 18 Railway was made by the General Staff, I think it was  
 19 highly improbable that the Vice-Minister KIMURA had  
 20 any voice in the matter."<sup>a</sup>

21 KIM-52. b. Tr. 5,607-8

22 KIM-53. a. Tr. 36,413; See also TOJO's Affidavit,  
 23 Tr. 36,421; concerning construction of the  
 railway.

24 KIM-54. a. Tr. 14,405

25



KIM-55. Prosecution witness WAKAMATSU,

1 Tadakatsu, testified that, "The decision to use POW  
2 labor on this railway was made by the Chief of Staff  
3 SUGIYAMA, Minister of War TOJO, and the Vice-Minister  
4 of War KIMURA. The last name through his official  
5 position, though not basically responsible."<sup>a</sup> (Later  
6 in this summation we shall quote from pages 75 and 76  
7 of "Prisoners of War," by W.E.S. Florey, American  
8 Council of Public Affairs, 1942, concerning the legal-  
9 ity of the use of POW in the construction of railways.)  
10 TANAKA, Tadakatsu testified that the employment of  
11 POW's in the construction work of the Burma-Siam  
12 Railway was decided through direct negotiations be-  
13 tween the Chief of the General Staff and the Minister  
14 of War. The construction order was drafted and issued  
15 by the General Staff Office.<sup>b</sup>

17 IMPERIAL GENERAL HEADQUARTERS.

18 KIM-56. It was said in the opening state-  
19 ment previously mentioned that KIMURA was a member  
20 of Imperial General Headquarters. KAWAHARA testified  
21 that KIMURA was not present at the Information Con-  
22 ference of Imperial Headquarters nor Information  
23 Conferences of Chiefs of Departments, nor the Commis-  
24

25 KIM-55. a. Tr. 14,634  
b. Tr. 31,816

1 sary Information Conferences held at the General  
2 Staff Office.<sup>a</sup>

3 KIM-57. Prosecution witness TANAKA, Ryukichi  
4 testified that, "As an attendant to the War Minister,  
5 the Vice-Minister had authority to attend meetings of  
6 the Imperial Headquarters. However, he had no  
7 authority whatever to take part in forming important  
8 decisions."<sup>a</sup> OIKAWA explained the position of the  
9 Navy Vice-Minister at Imperial Headquarters.<sup>b</sup>

10 KIM-58. TOJO explained that the War  
11 Minister could attend the Imperial Headquarters con-  
12 ferences as a participant. He further testified that  
13 not on a single occasion did he attend such a confer-  
14 ence.<sup>a</sup> I need not point out that if TOJO did not go  
15 his attendant could not go.

16 PLANNING BOARD

17 KIM-59. In an opening statement it was  
18 stated that KIMURA was Vice-Minister of War and  
19 Councillor of the Planning Board at the time of the  
20 renewal of the Anti-Comintern Pact.<sup>a</sup> This was a  
21 matter of national policy which was in the province

22 KIM-56. a. Tr. 31,753

23 KIM-57. a. Tr. 14,404

b. Tr. 33,341

24 KIM-58. a. Tr. 36,386-7

25 KIM-59. a. Tr. 6,048

1 of the diplomats and KIMURA had no connection with  
2 it whatever. Furthermore, no evidence has been pro-  
3 duced that KIMURA ever attended a meeting or ever  
4 took any part whatsoever in anything relative to  
5 the Anti-Comintern Pact. KIMURA's position as a  
6 councillor on the Planning Board was explained in  
7 paragraph 42A of this summation. There is no evi-  
8 dence that KIMURA did anything as such councillor.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



TOTAL WAR RESEARCH INSTITUTE

1 KIM-60. The affidavit of SAWAMOTO states that:  
2 "SAWAMOTO was councillor of the Total War Research Insti-  
3 tute as were the Vice Minister of other ministries but  
4 the only chance he had to take part in proceedings of  
5 the institute as I remember it now was to attend once  
6 a year, together with colleagues from other ministries,  
7 for the purpose of hearing the report of the result of  
8 the studies."<sup>a</sup>  
9

10 KIM-61. Prosecution witness HORIBA, who was an  
11 officer of the Institute, testified that he did not  
12 ever meet or talk with General KIMURA. He further stated  
13 that the position of councillor was a nominal post,  
14 without any particular substance.<sup>a</sup>

15 KIM-62. There is no evidence that KIMURA ever  
16 attended one of the meetings or ever knew what went on  
17 in the meetings. It will be noted also that General  
18 KIMURA was not a councillor of the Total War Institute  
19 after March 1943 and hence had no connection with it  
20 during the time that MURAKAMI testified about in his  
21 affidavit.<sup>a</sup>  
22

23 KIM-60. a. Tr. 31,675

24 KIM-61. a. Tr. 8,862

25 KIM-62. a. Ex. 3372; Ex. 113

1 KIM-63. I should also like to point out that  
2 IIMURA, who was also director of the Total War Research  
3 Institute from January 1941 to October 1941, testified  
4 that he received no direction from General KIMURA in  
5 connection with business of the Institute.<sup>a</sup>

6 SOUTHERN MILITARY OPERATIONS.

7 KIM-64. Reference is made to KIMURA in connec-  
8 tion with Communication 9 concerning issuance of military  
9 currency.<sup>a</sup> So far as KIMURA is concerned, this only  
10 shows that communications were received from the Chief  
11 of the Finance Bureau by various ministries, including  
12 the War Ministry, which, considering the possibility  
13 of carrying out a military operation, it was deemed  
14 necessary to issue military currency notes in foreign  
15 denominations for the purpose of helping to defray  
16 the war expenditures of the forces. The mode of  
17 procedure was to be determined at a conference of  
18 the Minister of Finance, War Minister and Navy Minister.  
19 The negotiations that were carried on in January or  
20 thereabouts were made before KIMURA's assumption of  
21 the post of Vice Minister and those in July or there-  
22 abouts were done as an entrusted matter of the Chief

23  
24 KIM-63. a. Tr. 27,071; see also TANAKA, Tadakatsu's  
25 affidavit, Tr. 31,817.

KIM-64. a. Tr. 8,456

1 of the Finance Bureau with which KIMURA was not concern-  
2 ed. There is no evidence that KIMURA participated in  
3 the formulation of an aggressive policy directed  
4 against the southern regions.

5 KIM-65. SHIBAYAMA testified that the officers  
6 of the War Ministry never planned or carried out  
7 operations.<sup>a</sup>

8 KIM-66. Witness YOSHIDA explained about the  
9 military currency in his affidavit.<sup>a</sup>

10 KIM-67. There was placed in evidence a telegram  
11 dated November 22, 1941, from TSUKADA, General Chief  
12 of Staff of the Southern Army, to KIMURA, Vice-Minister  
13 of War, which shows that the headquarters of the south-  
14 ern army were moved from Tokyo on 25 November 1941 to  
15 Formosa.<sup>a</sup> This was apparently for the information of  
16 the War Ministry and there is nothing to show that  
17 KIMURA took any part in planning this movement or that  
18 he had anything to do whatsoever concerning this matter.  
19 There has been ample evidence that the Vice Minister of  
20 War was not concerned with matters of command. We should  
21 also like to call your attention to the fact that  
22 KIMURA's chop or seal does not appear on this document

24 KIM-65. a. Tr. 31,806

25 KIM-66. a. Tr. 26,972 (see also Ex.3026, T.26,980)

KIM-67. a. Ex. 875; T. 8,984



nor on exhibit 873.

DECORATIONS

KIM-68. There is in evidence a telegram from Ott, Ambassador to Germany, in which he had asked for decorations for various Japanese officials, among them being KIMURA, about whom he says, "Lieutenant General KIMURA, Vice Minister of War, born 28 September 1888 in Tokyo Prefecture. KIMURA was in Germany 1922-1924. In his position as Chief of the General Staff of the Kwantung Army, 1939 to October 1940, he has especially worked in behalf of Germany. Vice Minister of War since 10 April 1941, he is one of the principal advocates of German-Japanese military cooperation."<sup>a</sup>

KIM-69. Mr. Levin's objection to the introduction of this document correctly describes the telegram in saying that, "It is a statement for the purpose of obtaining decorations on the part of the Germans and for that purpose they recommended certain decorations to be given various high Japanese governmental officials. There is, therefore, contained in there conclusions which are not borne out by any evidence and not by any facts."

KIM-68. a. Ex. 1272; Tr. 11,352

1 KIM-70. The evidence shows that KIMURA was  
2 born in Saitama Prefecture and not in Tokyo Prefecture  
3 as stated in the telegram. It shows that he held the  
4 position of Chief of General Staff of the Kwantung  
5 Army from 22 October 1940 to April 1941, and not as  
6 stated in the telegram.<sup>a</sup> The statement that "he  
7 especially worked in behalf of Germany", is explained  
8 by the man who recommended him for the decoration in  
9 the first place, namely General Kretschmer, in his  
10 affidavits in which he states that the Kwantung Army  
11 helped in getting shipments of tungsten, rubber and  
12 soy beans to Germany via Manchuria. He did not  
13 remember whether KIMURA did anything of the kind  
14 while he was Chief of Staff in the Kwantung Army or  
15 not.<sup>b</sup> Kretschmer also testified that in order to  
16 overcome the German Foreign Office's reluctance he  
17 regarded the superlative to be necessary where the  
18 positive would have been more correct and more  
19 corresponding to the reality. And the Ambassador  
20 added superlatives in his additional explanations.<sup>c</sup>

21  
22 TANAKA, Tadakatsu, testified that KIMURA  
23 did not support the German-Japanese Military Alliance.<sup>d</sup>

24 KIM-70. a. Ex. 113; Ex. 3347; T. 31,657  
25 b. T. 31,656  
c. T. 27,095  
d. T. 31,818

1 Kretschmer said that he observed nothing  
2 that indicated that Ott was truthful when he said  
3 that KIMURA's position had been enhanced when TOJO  
4 became Prime Minister.<sup>e</sup>

5 KIM-70-A. There is evidence that the 32nd  
6 Division that KIMURA was commander of at one time  
7 was stationed at Yenchou, China.<sup>a</sup> We do not deny  
8 that KIMURA was one of the thousands of soldiers  
9 stationed in China at one time.

10 POW PUNISHMENT ACT

11 KIM-71. In an opening statement it was  
12 stated that KIMURA was responsible for the design  
13 of the POW Punishment Act, the provisions of which  
14 were in direct contravention of the laws of war and  
15 the provisions of the Geneva POW Convention of 1929.<sup>a</sup>

16 KIM-72. You will recall that Judge Advocate  
17 General OYAMA testified in his affidavit that the  
18 Legal Section of the War Ministry was consulted by  
19 members of the War Ministry concerning the legality  
20 of the above-mentioned act and they were advised that  
21 it was legal.<sup>a</sup> He further testified that General  
22 KIMURA himself did not consult the Legal Affairs Section  
23

24 KIM-70. e. T. 31,657  
25 KIM-70-A. a. T. 16,258  
KIM-71. a. T. 12,872  
KIM-72. a. T. 16,258



about this matter,<sup>b</sup> and that the Vice Minister did not  
1 have any connection in facilitating the matter. He  
2 also testified that the purpose in revising the law  
3 was to make it conform to the ordinary criminal code  
4 of Japan which had been revised in 1908.<sup>c</sup>

5 General OYAMA also said that further con-  
6 sultation was made with the Legislative Bureau con-  
7 cerning the legality of the Prisoner of War Punish-  
8 ment Act.<sup>d</sup>

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 KIM-72. b. T. 31,697  
c. T. 31,693  
25 d. T. 31,695

M  
O  
r  
s  
e  
&  
W  
h  
a  
l  
e  
n

1 KIM-73. TANAKA, Tadakatsu, testified that  
2 General KIMURA actually knew nothing about this act  
3 until a very few days before it was explained to  
4 the Diet Committee<sup>a</sup> by him and that KIMURA took no  
5 part in the drafting of the act.<sup>b</sup>

6 KIM-74. Concerning the enactment and amend-  
7 ment of laws, TANAKA, Ryukichi, testified that the  
8 various heads of the sections would get in touch  
9 with the various bureau heads and the heads of the  
10 ministries in the Cabinet, then the matter would be  
11 taken up in a Cabinet meeting and the Vice-Minister,  
12 although he had authority to make suggestions, was  
13 not in a position to make decisions.<sup>a</sup>

14 KIM-75. TOJO testified that the act was based  
15 on the idea of applying with modifications the Geneva  
16 Protocol, and was drafted with the conviction that  
17 it was not in conflict with the Protocol.<sup>a</sup> He also  
18 testified that he was politically responsible for  
19 matters relating to the promulgation of the POW Punish-  
20 ment Act.<sup>b</sup>

21 KIM-76. The negotiations and liaison between  
22 the War Ministry and the Imperial Diet were in charge  
23

24 (KIM-73. a. Tr. 31,817  
b. Tr. 31,817  
KIM-74. a. Tr. 14,397  
25 KIM-75. a. Tr. 36,418  
b. Tr. 36,414)

of the Military Affairs Bureau.<sup>a</sup> There were no  
 1 regulations authorizing the Vice-Minister to engage  
 2 in political affairs or to negotiate with the Diet.  
 3 The members of the Government Committee were appointed  
 4 by the cabinet from among the Vice-Ministers and  
 5 Bureau Chiefs concerned and their functions were con-  
 6 fined to making explanations before the Diet. And  
 7 they were not in a position responsible to the Diet.  
 8 Accordingly, the duties of the members of the Govern-  
 9 ment Committee in the Diet were quite different from  
 10 those of the Parliamentary Vice-Minister or Parliam-  
 11 entary Counsellor from the War Ministry. Even during  
 12 the time when the Parliamentary Vice-Minister and the  
 13 Parliamentary Counsellor existed, the members of the  
 14 Government Committee in the Diet were appointed  
 15 separately in order to make their explanation in the  
 16 Diet concerning the particular business being con-  
 17 sidered.<sup>b</sup>

#### CORRECTION OF DATES

KIM-77. In another opening statement, it  
 21 was stated in error that KIMURA was Vice-Minister of  
 22 War 1941-1944.<sup>a</sup> The evidence shows that KIMURA was  
 23 "relieved of present post at his own request" on  
 24 (KIM-76. a. Ex. 74, Art. 12, par. 7  
 25 b. Tr. 31,764  
 KIM-77. a. Tr. 14,263)



11 March 1943.<sup>b</sup> He was Vice-Minister for only 15 months of the Pacific War. In this same opening statement it was said in error that KIMURA was Commander-in-Chief of the Japanese army in Burma from April 1944 to August 1945. The evidence shows that KIMURA arrived in Burma in the middle of September 1944.<sup>c</sup>

PROTESTS CONCERNING POW's

KIM-78. The next bit of evidence concerning KIMURA is the communication which was transmitted to the Allied governments concerning the observation of the Geneva Convention mutatis mutandis and concerning the giving due consideration to the racial habits and customs of interned prisoners in regard to food and clothing.<sup>a</sup> The prosecution stated that KIMURA had promised certain things to the Allied governments but actually KIMURA had merely answered the Foreign Office in the form of official correspondence, stating the view of the War Ministry, that view having been approved by the Minister. Whereupon, the Foreign Minister sent the notifications to the governments of the Allied Powers. Therefore, it was not KIMURA who made promises.

(KIM-77. b. Ex. 113, Tr. 731  
c. Tr. 31,729  
KIM-78. a. Ex. 1958, Tr. 14,299)

1 KIM-79. KIMURA is also referred to by  
2 prosecution witness TANAKA as being present at a  
3 meeting of bureau chiefs at which the treatment of  
4 POW's was being discussed.<sup>a</sup> There is nothing in  
5 the record to show that anything was said at the  
6 meeting by KIMURA or that he concurred in TOJO's al-  
7 leged decision to have officer POW's work. On the  
8 contrary, there is evidence that he rarely spoke.<sup>b</sup>  
9 See also TOJO's affidavit and YAMAZAKI's affidavit  
10 concerning this matter. TANAKA further testified that  
11 the Vice-War Minister did not have executive authority  
12 to carry out the business routine within the War  
13 Ministry except on matters delegated to him pertain-  
14 ing to the Ministry. He said further that if the  
15 bureau chiefs and section chiefs did not obey his  
16 orders, the Vice-War Minister had no power to punish  
17 or force them to obey orders.<sup>c</sup> Other witnesses have  
18 testified to the same effect.<sup>d</sup>

19 FORCING OFFICER POW'S TO WORK

20 KIM-79-A. There is in evidence an exhibit  
21 from TOJO's instructions to the Commander of the  
22 Zentsuji Division in which he stated that the situation  
23 (KIM-79. a. Tr. 14,289; Cf 31815  
24 b. Tr. 31,717  
25 c. Tr. 15,947-8  
d. Tr. 31,803)

1 of affairs did not permit anyone to lie idle doing  
 2 nothing but eating freely.<sup>a</sup> The prosecution in their  
 3 reply to our motion to dismiss stated that KIMURA  
 4 must share responsibility for this statement. How-  
 5 ever, they produce no evidence that KIMURA concurred  
 6 in, authorized, enforced or had anything to do what-  
 7 soever in connection therewith. On the other hand,  
 8 TANAKA, Tadakatsu, testified that KIMURA was not  
 9 present when the instruction was delivered and had  
 10 no part in drafting of the same.<sup>b</sup> TOJO stated that  
 11 regulations and orders with respect to POW's were  
 12 either made or approved by the War Minister.<sup>c</sup>

13 KIM-80. I wish to draw the attention of the  
 14 Tribunal to the testimony of witness YAMAZAKI, who  
 15 attended the conference where said instructions were  
 16 read. He stated that the instructions of the War  
 17 Ministry,<sup>a</sup> were planned on the initiative of Lieutenant  
 18 General UEMURA who was at that time Director of the  
 19 Bureau of Control of Prisoners of War and that the  
 20 instructions were drafted by UEMURA; that UEMURA  
 21 read the instructions for the Minister and that the  
 22 Vice-Minister did not attend the conference.<sup>b</sup> TANAKA,  
 23

24 (KIM-79A. a. Tr. 14,424  
 b. Tr. 31,817-8  
 c. Tr. 14,593  
 25 KIM-80. a. Ex. 1962-1963  
 b. Ex. 3049; Tr. 27,231)



Tadakatsu, testified that KIMURA never attended the  
 1 meetings of the Commanders of the POW camps in the War  
 2 Ministry.<sup>c</sup>

3 POW's IN MUNITIONS INDUSTRIES

4 KIM-81 The prosecution put in evidence an  
 5 application from the Eastern District Army to TOJO,  
 6 Minister of War, requesting that he sanction the  
 7 use of POW's for certain undermentioned work.<sup>a</sup> TOJO  
 8 when interrogated by the prosecution stated that he  
 9 permitted POW's to be worked in factories by  
 10 KAMAMURA (Tr. 14,595). There followed a list of eight  
 11 different working places. The eighth working place  
 12 being in the English text: "Munition's factories for  
 13 expanding production." The application appears to  
 14 have been approved by the Vice-War Minister. Witness  
 15 KAWAHARA explained that this was a matter that had  
 16 been delegated to the Vice-Minister by the War Minister  
 17 and the approval was based on the intention of the  
 18 War Minister as understood by the Vice-Minister and  
 19 did not represent the intentions of the Vice-Minister  
 20 himself.<sup>b</sup>

22 KIM-82. The prosecution made particular

23 (KIM-80. c. Tr. 31,817  
 24 KIM-81. a. Ex. 1967, Tr. 14,440  
 25 b. Tr. 31,783)

reference to the eighth working place only.<sup>a</sup> No doubt  
 1 because the English text refers to "Munitions factories."  
 2 The Japanese word used in the application for "munition<sup>3</sup>"  
 3 is "gunju". This is a narrow translation of the word.  
 4 The original meaning of the word was "military demand":  
 5 "gun" meaning "military" and "ju" meaning "demand".  
 6 It also means "war materials", "war supplies", and  
 7 "requisites for war".  
 8

9 KIM-83. To show that the term "munitions  
 10 industries" was a general term, I quote from a pros-  
 11 ecution exhibit,<sup>a</sup> "Outline of the Five Year Plan  
 12 for Production: 3. The term 'munition industries'  
 13 in this outline refers not only to industries engaged  
 14 in the manufacture or repair of finished goods or parts  
 15 for war purposes, but applies also to vital raw mater-  
 16 ials industries."

17 It is our submission that if the applicant  
 18 had been making application of POW's to work in the  
 19 production of "arms" and "munitions" he would have  
 20 used the words "heki" and "denyaku".  
 21

22 KIM-84. You will recall that Article 31,  
 23 Chapter 3 of Geneva Convention states: "Labor furnished  
 24 by prisoners of war shall have no direct relation with

25 (KIM-82. a. Tr. 31,780.

KIM-83. a. Ex. 841, Tr. 8,261-2)

1 war operations. It is especially prohibited to use  
2 prisoners for manufacturing and transporting arms or  
3 munitions of any kind, or for transporting material  
4 intended for combatant units." The official Japanese  
5 translation of the above quoted article uses the words  
6 "heiki" and "danyaku" for "arms" and "munitions".

7 KIM-85. Florey says ---

8 THE PRESIDENT: Is that in evidence? Is  
9 Florey's statement in evidence?

10 MR. HOWARD: It is not, your Honor.

11 THE PRESIDENT: Well, omit it.

12 MR. HOWARD: That puts us over then to page 47,  
13 paragraph 87.

14 KIM-87. The prosecution has not produced any  
15 direct evidence of POW's having been used in work in  
16 munitions factories. Surely they could have produced  
17 one former POW witness to testify to his having so  
18 worked if it were true. On the other hand, witness  
19 HIGASA, who had charge of POW matters in the Eastern  
20 Army of Japan which made the above-mentioned applica-  
21 tion, swore that the application did not contain any  
22 plan of employing POW's in labor directly connected  
23 with military operations such as production and trans-  
24 portation of arms and ammunition. He further swore  
25 that at no time were POW's employed in such kind of



1 labor mentioned above.<sup>a</sup> It is our submission that the  
2 loose translation of the word "gunju" had caused a  
3 misunderstanding by the prosecution.

4 KIM-88. The prosecution put in evidence an  
5 "Inquiry Concerning the Question of Making Available  
6 the Manchurian Machine Tool Company for a rapid  
7 increase in Aircraft Production" from the Vice-War<sup>a</sup>  
8 Minister to the Chief of Staff of the Kwantung Army.  
9 It is not clear as to what the prosecution intended  
10 to prove by this document. Possibly that POW's were  
11 to be used in the direct production of arms and mun-  
12 itions. However, a close reading of the application  
13 shows on its fact that they were to be used for the  
14 production of machine tools which would in turn be used  
15 in the production of aircraft.<sup>b</sup> It should not be  
16 necessary for us to point out that machine tools are  
17 not arms or munitions. It would be as reasonable to  
18 call the production of the grease to be used in the  
19 aircraft factories as direct production of arms and  
20 munitions.  
21

22 KIM-89. Witness SEMBA testified that he  
23 drafted the "Note of Utilizing the Manchurian Machine  
24 (KIM-87. a. Tr. 31,713-14

25 KIM-88. a. Tr. 14,497  
b. Tr. 14,499)

1 Tool Company for the Purpose of Urgent Aerial Main-  
 2 tenance"<sup>a</sup> with the intention of engaging the company  
 3 in the speedy production of machine tools. That the  
 4 prisoners participated in the production of bench  
 5 lathes and automatic lathes of the German Index type.  
 6 He further testified that they did not project and  
 7 carry out the direct production of aircrafts. SEMBA  
 8 also testified<sup>b</sup> that the above-mentioned note was  
 9 issued under the name of the Vice-Minister, as en-  
 10 trusted according to the "Note Concerning the Disposal  
 11 of POW's at the Present"<sup>c</sup> decided by the War Minister  
 12 on May 2, 1942.<sup>d</sup>

13 KIM-90. Witness KUBOTA testified that he was  
 14 President of the Manchurian Engineering Machinery  
 15 Company, Ltd., when POW's were used there.<sup>a</sup> He ex-  
 16 plained in detail how they were used and treated. He  
 17 also testified that his company never used POW's in  
 18 work related to the manufacture of arms or with work  
 19 directly concerned with the operations of war.

20 SHOWING OF POW's

21 KIM-91. There is evidence that a report was  
 22 sent to KIMURA describing the reactions among the  
 23 general public following the internment of British  
 24

25 (KIM-89. a. Tr. 31,702  
 b. Tr. 31,700  
 c. Ex. 1965-A, Tr. 14,475  
 d. Ex. 3355, Tr. 31,700  
 KIM-90. a. Tr. 27,887)

POW.<sup>a</sup> Witness IHARA testified that he was Chief of Staff of the Japanese Army in Korea when the POW's in question were received there. He also testified that they tried to protect the dignity of the prisoners.<sup>b</sup> That such reports were customarily addressed to the Vice-War Minister from the Chief of Staff.<sup>c</sup>

KAWAHARA testified likewise.<sup>d</sup>

KIM-92. Therefore, correspondence between the Chief of Staff of the Korean Army and the Vice-Minister was actually correspondence between the Korean Army Headquarters and the War Ministry. We wish also to call your attention to the fact that KIMURA's seal does not appear on this report. Furthermore, the Japanese original shows that the application for POW for Korea was approved by the War Minister.<sup>a</sup> Witness KAWAHARA further testifies to this fact.<sup>b</sup>

KIM-93. Witness WAKAMATSU testified that he was a former Vice-War Minister and that the Vice-War Minister had no power of decision in POW matters.<sup>a</sup>

DOOLITTLE FLIERS.

KIM-94. The prosecution has placed in evidence an order transmitted by KIMURA concerning the disposition

(KIM-91. a. Tr. 14,521	(KIM-92. a. Ex. 1973; Tr. 14,513
b. Tr. 30,161	b. Tr. 31,779
c. Tr. 30,162	
d. Tr. 31,757	(KIM-93. a. Tr. 14,655)



a

of enemy airmen. Certain corrections were made in  
1 the translation by the Language Board. The order of  
2 transmissal with the corrections reads as follows:

3 "Communication (Army Secret No. 2190)

4 "Despatched from: Vice War Minister KIMURA,  
5 Heitaro

6 "To: Each Chief of Staff stationed in Japan  
7 and Outside of Japan.

8 "Re: Treatment of Enemy Air Crew Members.

9 "Dated: 28 July 1942.

10 "By order you are notified to take note and  
11 understand that the following decision was made in  
12 regard to the treatment of enemy air crew members who  
13 entered our jurisdiction with the object of raiding  
14 Japanese territory, Manchukuo and our regions of oper-  
15 ation.

16  
17 "(1) Those who do not violate the war-time  
18 international law shall have to be treated as POW's  
19 and those who show actions of violating the said law  
20 shall be treated as having committed major war crimes.

21 "(2) Defense Commander-in-Chief of various  
22 places (including troops stationed in Japanese ter-  
23 ritory outside Japan and the governor of occupied  
24

25 (KIM-93. a. Tr. 14,655  
KIM-94. a. Ex. 1992)

Hongkong) shall send for Court Martial such enemy  
1 air crew members, who entered the respective juris-  
2 dictions and are suspected of deserving treatment as  
3 war-time capital criminals. (In regard to the above  
4 courts-martial, the provisions of the Specially  
5 Established Court Martial stated in the Army Court  
6 Martial Law shall be applied)."

7  
8 KIM-95. It is assumed that this is the com-  
9 munication that the prosecution referred to when they  
10 said that KIMURA personally issued the order for the  
11 death penalty on captured air men since this is the  
12 only order that is in evidence concerning the matter  
13 which appears to have been signed by KIMURA. We submit  
14 that this might more correctly be described as an  
15 order to try by existing court-martial procedure those  
16 captured air men who were suspected of violating inter-  
17 national law.

18 KIM-96. We should like to call the Tribunal's  
19 attention to the fact that the "Notification of Matters  
20 Pertaining to the Treatment of Crew Members of Raiding  
21 Enemy Planes",<sup>a</sup> which sets out suggested Articles of  
22 War to be made the military disciplinary law by the  
23 China Expeditionary Force, was sent to the China Ex-  
24 peditionary Force by Seimu TANABE, Deputy Chief of  
25 (KIM-96. a. Ex. 1993, Tr. 14,670)

Staff by order of the Chief of the General Staff.

1 There is no evidence that KIMURA had anything to do  
2 with drafting or transmitting the suggested Articles  
3 of War. Therefore, we are not concerned with the  
4 question as to the legality or the Articles of War.  
5 We submit there is nothing contrary to international  
6 law in the order signed by KIMURA.

7 KIM-97. Evidence was introduced to show that  
8 the procedure set out in Army Secret Order No. 2190<sup>a</sup>  
9 was the same as that used in the trial of Japanese  
10 soldiers. Such evidence being excerpts from Japanese  
11 Military Court Martial Law<sup>b</sup> and excerpts from the  
12 Military Criminal Code.<sup>c</sup>

13 KIM-98. Prosecution witness TANAKA, Ryukichi,  
14 testified that the matter was decided in the Imperial  
15 Headquarters by the Chief of the Army General Staff.<sup>a</sup>  
16 He further testified that the responsibility of the  
17 Vice-Minister in connection with the note relating to  
18 the treatment of POW's was merely to transmit the note.<sup>b</sup>

19 KIM-99. An excerpt from an interrogation of  
20 TOJO shows that TOJO stated that the Army Chief of  
21 Staff SUGIYAMA went directly to TOJO and demanded  
22 severe punishment for the fliers; that as a result  
23

24 (KIM-97. a. Ex. 1992 (KIM-98. a. Tr. 14,387  
25 b. Ex. 3354, b. Tr. 14,385)  
Tr. 31,676  
c. Ex. 3353, Tr. 31684



of the request he issued an order for military administration; that he was not positive whether the order was issued over his name or by Imperial Headquarters but that no matter who issued it he was responsible for it.<sup>a</sup> Witness TANAKA, Tadakatsu, testified that the decision on the main points of this order was approved by the direct request of the Chief of the General Staff.<sup>b</sup> The death penalty for the three fliers was decided in a consultation between the Chief of the General Staff, SUGIYAMA, and War Minister TOJO.<sup>c</sup> KIMURA was not involved in the matter.

SUPREME WAR COUNCIL:

KIM-100. There is evidence that KIMURA attended a meeting of the Army members of the Supreme War Council.<sup>a</sup> There is no evidence that anything occurred at this meeting other than an explanation of the international situation. Witness SANADA testified concerning what took place there in his affidavit.<sup>b</sup> There is no evidence that he attended any other meeting of this body.

The Nuernberg decision, in referring to certain organizations and groups, says that membership

(KIM-99. a. Tr. 14,601-2  
b. Tr. 31,816  
c. Tr. 1460-2  
(KIM-100. a. Tr. 16,179  
b. Tr. 28,735)

alone is not enough.

1 KIM-101. This "Gunji Sangi Kan" meeting  
2 should not be confused with "Saiko-Senso-Shido-Kaigi"  
3 meetings. Both of these terms have been interpreted  
4 as meaning "Supreme War Council." We submit that a  
5 more precise interpretation of Gunji Sangi Kan would  
6 be "Military Affairs Councillors Conference." The  
7 Conference for the Supreme Direction of the War (Saiko-  
8 Seno-Shido-Kaigi) was organized during the time of  
9 the KOISO Cabinet.<sup>a</sup> KIMURA was not a member of this  
10 body.  
11

12 KIMURA IN BURMA

13 KIM-102. Prosecution, in their answer to  
14 our motion to dismiss, as to KIMURA, stated that  
15 "from 30 August 1944 to the surrender he was commander  
16 of the army in Burma. The outrages which took place  
17 there during that period are described in Exhibits  
18 1573-A, 1574-A, 1552-A, 1553-A, 1555-A, 1558-A. For  
19 these we submit he is directly responsible."  
20

21 KIM-103. Exhibit 1573 is a Synopsis of  
22 Evidence Concerning Coolies on the Railway. Exhibit  
23 1574, the Affidavit of Major Robert Crawford, is one  
24 of the affidavits mentioned in Exhibit 1573 and tells  
25 (KIM-100. c. Nuernberg Judgment, p. 16,930  
KIM-101. a. Tr. 631)

1 of the mistreatment of coolies on the Burma-Siam Rail-  
2 way, the last date mentioned being December 1943 which  
3 was before the arrival of KIMURA in Burma.

4 KIM-104. The prosecution placed in evidence  
5 many exhibits concerning alleged atrocities in Burma.  
6 In order to show that many of these happened before  
7 KIMURA arrived and for other reasons we shall mention  
8 them all briefly.

9 Please remember that these are practically  
10 all ex parte statements and that only two of the  
11 affiants, who testified about the Burma-Siam Railway,  
12 were available for cross-examination in this court.  
13 Also we will cite evidence that there were other troops  
14 in Burma besides KIMURA's command.

15 (a) Concerning the alleged facts stated in  
16 thirteen exhibits, namely, No. 1535(A), 1548(A) to  
17 1550(A), inclusive; 1554(A) to 1558(A) inclusive, and  
18 1579 to 1582(A)<sup>a</sup> inclusive. All of the above exhibits  
19 except 1557(A) and 1558(A) seem to be the ones bearing  
20 on the alleged facts which occurred before General  
21 KIMURA took the post of Commander of the Burma Area  
22 Army on the 12th of September 1944.<sup>b</sup> The Tavoy Inter-  
23 ment Camp which appears in Exhibits 1557(A) and 1558(A)  
24 (KIM-104. a. Ex. 1535(A) to 1585(A) inclusive  
25 Tr. 12,963 to 13,106  
b. Tr. 27,575, 27,601, 27,537)



1 was under the direct control of the head of the 24th  
2 Mixed Brigade belonging to the Burma Area Army.<sup>c</sup> In  
3 December 1944, two and one-half months after KIMURA  
4 arrived in Burma, the Tavoy Internment Camp was trans-  
5 ferred from the command of the Burma Area Army to the  
6 Thai Area Army by order of the commander of the Southern  
7 General Army. The Tavoy Internment Camp was put under  
8 the direct control of the unit which was under control  
9 of the Commander of the Thai Area Army and stationed  
10 in Tavoy.<sup>d</sup>

11 (b) Concerning the alleged facts which appear  
12 in the twenty-one exhibits, namely, 1536, 1559 to  
13 1578(A) inclusive, and the facts to which both wit-  
14 nesses, Mr. John Williams and Major John Lloyd, testi-  
15 fied on the 17th of December 1946.<sup>e</sup>

16 It appears from these that the facts are  
17 related to the alleged ill treatment by the Japanese  
18 armies given to war prisoners, such as using them for  
19 the construction of the Thai-Burma Railway. The con-  
20 struction of the Thai-Burma Railway had been completed  
21 already a year before General KIMURA arrived at his  
22 post as the Commander of the Burma Area Army and more-  
23 over the construction, operation or management of which  
24

25 (KIM-104. c. Tr. 27,584  
d. Tr. 27,584  
e. Tr. 12,996 to 13,049)

1 was conducted by the commander of the Field Railway  
2 Corps then under the direct control of the Commander  
3 of Southern General Army.<sup>f</sup> The Commander of the Burma  
4 Area Army had nothing to do with the Burma-Siam Railway.

5 (c) Concerning the alleged facts which appear  
6 in exhibits 1584 and 1585(A):

7 It appears from these that the alleged facts  
8 are related to the alleged ill treatment by the Jap-  
9 anese armies of the war prisoners, such as using them  
10 for constructing the Mergui-Kirihkan Road from April  
11 1945 to August of the same year. Since December 1944,  
12 Mergui Area, not to mention Tavoy Area, entered under  
13 the control of the commander of the Thai Area Army in  
14 accordance with the order of the Commander of the Southern  
15 General Army.<sup>g</sup> Kirihkan is in Thailand. The command  
16 of the Burma Area Army had nothing to do with the  
17 Mergui-Kirihkan Road.

18 (d) Concerning the alleged facts which  
19 appear in the fifteen exhibits, namely 1537(A) to  
20 1547(A) inclusive; 1551(A) to 1553(A) inclusive; and  
21 1583(A):

22 It appears from these that some of the facts  
23 occurred during General KIMURA's tenure of office as  
24 (KIM-104. f. Tr. 27,583-84; Tr. 27,538  
25 g. Tr. 27,584)

1 the commander of the Burma Area Army. The authorities  
2 of the Area Army headquarters knew nothing about the  
3 alleged facts appearing in the said exhibits and never  
4 issued any orders in connection therewith.<sup>h</sup>

5 Since the alleged facts which appear in the  
6 exhibits, namely, a part of 1539(A) and 1541(A),  
7 1542(A), 1543(A), 1545(A), and 1546(A) are undated,  
8 I shall mention them no further.

9 Ever since General KIMURA arrived at his  
10 post as the commander of the Burma Area Army, the  
11 Japanese army was continuously being defeated; thus  
12 they were put in an awkward predicament. Nevertheless,  
13 General KIMURA offered his serious efforts for the  
14 maintenance of the military discipline and for the  
15 grasping of the popular feeling throughout his tenure  
16 of office. He also endeavored to drive home his  
17 lesson by all means to his subordinate commanders who  
18 also did their best to obey their commander. The  
19 military discipline was strictly maintained and Japan  
20 and Burma were friendly.<sup>i</sup>

21 KIM-105. IKEJIRI testified that the Rangoon  
22 POW Camp was under the control of the Commander of  
23 the Combined Southern Army and that the Chief of the  
24 (KIM-104. h. Tr. 27,514; 27,583; 31,726;  
25 31,730; 31,735; 31,744  
i. Tr. 31,736-79; 31,731)



1 Rangoon Camp was appointed and removable by the Chief  
 2 of the Malay POW Camp.<sup>a</sup> On cross-examination he  
 3 testified that on all important matters the commandant  
 4 received orders from the POW Camp Commander at Malaya.<sup>b</sup>  
 5 He further testified that the treatment of POW's  
 6 was generally good during the time KIMURA was in Burma  
 7 and that letters of thanks were received from former  
 8 POW's.

9 KIM-106. ICHIDA, who was KIMURA's Chief of  
 10 Staff in Burma, stated that supplies had almost ceased  
 11 to come from Japan in 1943.<sup>a</sup> He further testified  
 12 concerning the efforts made by KIMURA to maintain  
 13 discipline among his troops and to gain and maintain  
 14 the confidence of the natives. He also testified con-  
 15 cerning the actions of the Burma National Defense Army  
 16 and guerrillas.<sup>b</sup> ICHIDA stated that not one single  
 17 instance of unlawful conduct was ever reported to the  
 18 Army Headquarters and that he was certain that no  
 19 orders were ever issued by KIMURA for perpetration of  
 20 atrocious acts.<sup>c</sup> That the Burma Area Army had no part  
 21 in the construction, maintenance and operation of the  
 22 Burma-Siam Railway.<sup>d</sup> And that the Tavoy and Mergui

23 (KIM-105. a. Tr. 27,538  
 24 b. Tr. 27,544  
 25 (KIM-106. a. Tr. 27,575  
 b. Tr. 27,579-80  
 c. Tr. 27,583  
 d. Tr. 27,584)

1 army districts were transferred to the jurisdiction  
 2 of the Thailand Area Army in December 1944.<sup>e</sup> He tes-  
 3 tified that the Burma Area Army had no command over  
 4 the air force.<sup>f</sup>

5 KIM-107. The prosecution refers to exhibit  
 6 1541, containing the report of Captain TAZUMI's trial.<sup>a</sup>  
 7 Please note that the date of the alleged offense is  
 8 not given. TAZUMI testified that he did not remember  
 9 of any illegal acts by Japanese guards upon POW's  
 10 after September 1944.<sup>b</sup> He also testified about the  
 11 kind treatment given to a British naval officer. He  
 12 further testified that after July 1944 the number of  
 13 patients in Rangoon Jail gradually decreased and the  
 14 health of the POW's took an uptrend.<sup>c</sup> It was impossible  
 15 for them to keep hygienic conditions good on account  
 16 of the shortage of medicine but generally speaking  
 17 the camp was in good condition. POW's worked seven  
 18 hours a day. Vegetables and other products were  
 19 supplied.<sup>e</sup> Letters were received<sup>f</sup> from Brigadier  
 20 Hobson and Major Loring, British officers representing  
 21 the POW's, expressing their thanks for the fair treatment  
 22 of POW's. Supplies from the rear were very scanty but  
 23

24 (KIM-106. e. Tr. 27,584

f. Tr. 27,588

25 (KIM-107. a. Tr. 27,594

b. Tr. 27,573-B

c. Tr. 27,568

(KIM-107. d. Tr. 27,569

e. Tr. 27,571

f. Tr. 27,573)

every effort was made for the good treatment of POW's.<sup>g</sup>

1 KIM-108. Prosecution exhibit 1541-A states  
2 that: "It was stated in several of the affidavits  
3 that the accused TAZUMI was a better prison commandant  
4 than any of his predecessors."<sup>a</sup> The evidence shows  
5 that TAZUMI was the commandant while KIMURA was in  
6 Burma.<sup>b</sup>  
7

8 KIM-109. There is in evidence an excerpt  
9 from the "Biennial Report of General Marshall relative  
10 to the progress of the Burma Campaign."<sup>a</sup> It corrobor-  
11 ates other testimony concerning the miserable condition  
12 of the Japanese Army in Burma while KIMURA was in  
13 command. The Allies were not making it easy for them  
14 to maintain discipline and get supplies.

15 KIM-110. YOSHIDA testifies that the Japanese  
16 Army and the Burmese people were well disposed toward  
17 each other because of racial similarities. He also  
18 testified concerning the impossibility of commanders  
19 communicating with their troops. He further testified  
20 concerning the conditions generally and of the efforts  
21 of KIMURA to maintain discipline.  
22

23 (KIM-107. g. Tr. 27,542

(KIM-108. a. Tr. 31,748

b. Tr. 27,543

24 (KIM-109. a. Tr. 27,596

25 (KIM-110. a. Tr. 27,605)



1 THE PRESIDENT: We will recess for fifteen  
2 minutes.

3 (Whereupon, at 1445, a recess was  
4 taken until 1500, after which the proceed-  
5 ings were resumed as follows:)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

S  
p  
r  
a  
t  
t  
&  
L  
u  
d  
e

1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Howard.

4 MR. HOWARD: KIM-111. HIRAKA testified concern  
5 KIMURA's efforts to have the Burmese people treated  
6 with kindness<sup>a.</sup> and that upon the withdrawal of Japanese  
7 troops from Rangoon KIMURA prohibited by order the<sup>b.</sup>  
8 burning of the property of the Burmese people.

9 KIM-112. HONDA testified that he was in com-  
10 mand of the 33rd Unit under the Burma Area Army from  
11 April 1944 to the end of hostilities, and I quote:  
12 "I have read the court exhibits concerning the alleged  
13 atrocities in Burma. Of the alleged crimes mentioned  
14 in exhibit 1537-A and 1549 to 1553-A inclusive, I  
15 state that no orders of any kind were given by me con-  
16 cerning the matters and I knew nothing about the illegal  
17 acts mentioned at all, notwithstanding that they appear  
18 to have happened in the zone of operations under my  
19 charge."<sup>a.</sup>

20 He further testifies concerning the efforts  
21 of KIMURA to maintain discipline, saying that KIMURA  
22 laid emphasis on the proper use of reward and punish-  
23 ment,<sup>b.</sup> and instructed them to put the "Battlefield

24 KIM-111. a. Tr. 27,610.  
25 b. Tr. 27,613.  
KIM-112. a. Tr. 31,730.  
b. Tr. 31,731.

Instructions" in practice.

1 SAKURA testified that no retaliatory measures  
2 were to be taken against those who had rebelled among  
3 the Burmese National Army. Those who were surrend-  
4 ing were to be protected. So KIMURA ordered.

5 KIM-113. YAMAGUCHI testified that the Aviation  
6 Division in Burma, the Hikari Organ in charge of Liaison  
7 Affairs with the Indian National Army, the South Field  
8 Railway Corps, the Marine Transport Corps and the Naval  
9 Base Forces, all of whom were in Burma, were not under  
10 the command of KIMURA.<sup>a.</sup>

11 KIM-114. ICHIDA testified concerning the Moul-  
12 mein case.<sup>a.</sup> He gave evidence that the Burmese who had  
13 been kept in custody in Moulmein had been handled by  
14 the military police without orders from anyone. He  
15 further testified that reports concerning the Burma  
16 atrocities would have come to him in headquarters but  
17 that none were received. He also testified concerning  
18 the effort of KIMURA to maintain discipline.<sup>b.</sup> He gave  
19 examples of punishment meted out by KIMURA.<sup>c.</sup>

20 KIM-115. TAKAGI testified that KIMURA did not  
21 order any of the alleged illegal acts committed in Burma.<sup>a.</sup>

22 KIM-116. TANAKA, Nobuo, testified concerning  
23 the efforts of KIMURA to maintain discipline.<sup>a.</sup> He

24 KIM-113. a. Tr. 31,747. KIM-114. c. Tr. 31,738.  
25 KIM-114. a. Ex. 1539. KIM-115. a. Tr. 31,744.  
b. Tr. 31,735. KIM-116. a. Tr. 31,723.



also testifies concerning the Kalagon Massacre, explaining that the major in charge was the highest-ranking officer held responsible. He was obliged to order Colonel TSUKADA to suppress some guerrillas near Kalagon and he sent clothes and provisions to the people for their pacification. But the Kalagon massacre broke out due to an abnormal action of a battalion commander. General TANAKA did not order any such atrocity and did not learn about it until after hostilities had ceased. He was not indicted for any offense.

KIM-117. The prosecution, in their answer to our motion to dismiss, <sup>a.</sup> while discussing the responsibility of commanders in the field, mentioned the decision of the Supreme Court of the United States in the YAMASHITA case. In order to show that they did not rule upon whether or not a wrong decision was made by the Military Tribunal trying YAMASHITA, I quote from the decision of the Supreme Court of the United States: "... We all emphasized in ex parte Quirin, as we do here, that on application for habeas corpus we are not concerned with the guilt or innocence of the petitioners. We consider here only the lawful power of the commission to try the petitioner for the offense charged. In the present cases, it must be recognized throughout that

KIM-117. a. Tr. 16,787.

our motion to dismiss, while discussing the responsibility of commanders in the field, mentioned the

1 the military tribunals which Congress has sanctioned  
2 by the Articles of War are not courts whose rulings and  
3 judgments are made subject to review by this Court . . .  
4 If the military tribunals have lawful authority to hear,  
5 decide and condemn, their action is not subject to  
6 judicial review merely because they have made a wrong  
7 decision on disputed facts."

8 And again on page 9 they say: "We do not here  
9 appraise the evidence in which petitioner was convicted.  
10 We do not consider what measures, if any, petitioner  
11 took to prevent the commission, by the troops under  
12 his command, of the plain violations of the law of war  
13 detailed in the bill of particulars, or whether such  
14 measures as he may have taken were appropriate and  
15 sufficient to discharge the duty imposed upon him.  
16 These are questions within the peculiar competence of  
17 the military officers composing the commission and were  
18 for it to decide."<sup>a.</sup>

19 The above quotation is from the majority  
20 decision of the court. One of my colleagues, Mr. Cole,  
21 will quote from Mr. Justice Murphy's dissenting opinion  
22 later.  
23

24 We submit that KIMURA took appropriate and  
25 KIM-117. a. Supreme Court of the U.S., Nos. 61 and 672  
Miscellaneous - Oct. Term 1945.

1 sufficient measures to discharge the duty imposed upon  
2 him in Burma.

3 AFTER PROSECUTION CLOSED.

4 KIM-118. After the prosecution had closed  
5 their case and while the individual defense of KIMURA  
6 was being presented, the prosecution placed in evidence  
7 their exhibit 336<sup>a</sup>-A. The prosecutor cross-examined  
8 witness KAWAHARA concerning this document after having  
9 distributed mimeographed copies in English to members  
10 of the Tribunal. The English copies show a distorted  
11 picture of the Japanese original. The prosecutor's  
12 questions and the witness's answers clear up the dis-  
13 tortion to a certain extent but not completely. An  
14 examination of the original will disclose that it is a  
15 printed form with various rectangles thereon. One  
16 rectangle has the word Minister printed in it. Under  
17 that rectangle are two others, in which one is printed  
18 Vice-Minister and the other Parliamentary Vice-Minister.  
19 Below these two rectangles are three rectangles in  
20 which the words Chief of Competent Bureau, Senior Adju-  
21 tant, and Councillor respectively are printed. Various  
22 other rectangles are below these.  
23

24 KIM-119. The following is typewritten on  
25 the form, "Regarding the Visit of Swiss Representatives  
KIM-118. a. Tr. 31,791.



1 to British POW's and Internees." In the rectangle with  
2 Minister the one character meaning "delegate" is typed.  
3 In the rectangle with Vice-Minister the word "delegate"  
4 is also typewritten. In one rectangle is typewritten  
5 "military affairs section." In another, "Military  
6 Administration Section." Under Military Administration  
7 Section is the signature of YOTSUMOTO indicating that  
8 he drafted the document. The signature of KAWAHARA,  
9 UEMURA, YAMAZAKI, MAKI and IIO also appear.

10 KIM-120. On cross-examination the witness  
11 KAWAHARA made it clear that the handling of the matter  
12 was delegated by the War Minister to the chief of the  
13 competent bureau, UEMURA, and that as a matter of form  
14 the character "I" meaning delegated, was customarily  
15 placed after both the words Minister and Vice-Minister  
16 when authority is delegated to bureau chiefs by the  
17 Minister. He further testified that it was a matter  
18 of form that the terms Vice-War Minister and Vice-  
19 Minister of Foreign Affairs appeared on the document.

20 KIM-121. KAWAHARA also testified that KIMURA's  
21 seal did not appear on the document in question and  
22 that KIMURA had not seen it.  
23 a.

24 KIM-122. It is a good example of a Vice-  
25 Minister Note (not by order) about which KAWAHARA  
KIM-121. a. Tr. 31,800.

1 explained.<sup>a.</sup> He said that answers to inquiries not  
2 only included the matters under the charge of the Vice-  
3 Minister but they often included matters decided by  
4 the War Minister or under the charge of bureau chiefs.  
5 Moreover, at that time the War Ministry usually des-  
6 patched an average of approximately 4,000 official  
7 documents a day and most of these documents dealt with  
8 matters under the charge of chiefs of bureaus. All of  
9 this is in accordance with the General Rules Concerning  
10 the Organization of the Ministries;<sup>b.</sup> particularly  
11 Art. 2, Art. 16 and Art. 18 which have been previously  
12 mentioned in this summation. We submit that the only  
13 matters that could be legally re-entrusted are those  
14 set out in Art. 27 of Exh. 3348.

15 KIM-123. KAWAHARA testified that matters in  
16 the War Ministry concerning the treatment of POW's lay  
17 chiefly in the hands of the Chief of the POW Control  
18 Bureau, but that other chiefs of bureaus disposed of  
19 the POW matters which fell under their jurisdiction,  
20 holding themselves directly responsible to the Minister.<sup>a.</sup>

21 KIM-124. On 27 October 1947, the prosecution  
22 placed in evidence exhibit 3367-B in a similar manner  
23 that exhibit 3367-A was introduced.<sup>a.</sup> Mimeographed

24 KIM-122. a. Tr. 31,756.  
25 b. Tr. 17,484-86.  
KIM-123. a. Tr. 31,758.  
KIM-124. a. Tr. 31,797.

1 English copies were distributed to Members of the  
2 Tribunal which did not accurately depict the original.  
3 In the original there is a rectangle with "designation  
4 of decision" printed therein. Within this rectangle  
5 the character Vice-Minister is rubber stamped.

6 KIM-125. Among other things on the document  
7 is a plan of notification from the Vice-Minister to the  
8 Chief of the Staff of the Eastern Army stating, "Dr. F.  
9 Paravicini, the representative in Japan of the Red  
10 Cross International Committee, has been given permission  
11 to inspect the Tokyo POW Camp in the beginning of  
12 December. You are asked to deal suitably with the matter,  
13 I notify this to you by order." This is an example of a  
14 Vice-Minister's Note by Order as explained by KAWAHARA  
15 on 24 October 1947.<sup>a</sup> He said that documents sent and  
16 received by the Vice-Minister comprised in their con-  
17 tents not only the matters delegated to him but also  
18 those decided by the Minister and those delegated to  
19 bureau chiefs. He also stated that the mere fact that  
20 a man's name was placed on a piece of official corres-  
21 pondence or order did not necessarily mean that such  
22 person was responsible for the subject matter therein  
23 contained. To make this clear, the "note sent by order"  
24 was invariably preceded by an introductory remark,  
25

KIM-125. a. Tr. 31,755-6.



1 "as the Minister has decided so I send this note  
2 by order."

3 KIM-126. This is evidently a matter the  
4 policy of which had been made by the War Minister and  
5 the carrying out of the policy entrusted to a bureau.  
6 In this regard you will remember that exhibit 3367-A  
7 in speaking of permitting visits by agents of the  
8 protecting powers of the enemy used the words, "since  
9 it is the Imperial policy . . ." There has been  
10 ample evidence that KIMURA had no power of decision  
11 in matters of policy.<sup>a.</sup>

12 KIM-127. Concerning item 39 of IPS document  
13 1552 which is similar to exhibit 3367-B, Captain  
14 Kraft, the Language Arbiter, stated, "The third line  
15 of the English copy, 'Decision authorized by: Vice-  
16 Minister,' gives the wrong impression because in  
17 the Japanese it is a form which says 'Decision  
18 authorized by Vice-Minister,' but it does not have  
19 the Vice-Minister's authorization there. It would  
20 appear that the authorization has been given there,  
21 but it has not, From the English it would appear  
22 so."<sup>a.</sup> An examination of the Japanese original of  
23 exhibit 3367-B will show that there is no seal of the

24 KIM-126. a. Tr. 31,719-21; Tr. 14,387-88.  
25 KIM-127. e. Tr. 38,160.

1 Vice-Minister thereon. In our submission the above-  
2 quoted words apply equally to exhibit 3367-B and  
3 item 39.

4 IN REPLY TO CERTAIN PARTS OF PROSECUTION  
5 SUMMATION.

6 KIM-128. Prosecution in their summation,  
7 paragraph KK-2, mention that KIMURA was decorated in  
8 recognition of his services during the China Incident.  
9 We do not deny that KIMURA was one of the 3,319,548  
10 Japanese who were given awards in connection with  
11 the China Incident.<sup>a.</sup>

12 KIM-129. Prosecution in their summation,  
13 par. KK-4, say in referring to KIMURA, as Vice-Minister  
14 of War, it was part of his duty to attend meetings  
15 of Imperial General Headquarters but there is no evi-  
16 dence that he ever attended a meeting. On the con-  
17 trary, we have cited evidence that TOJO never attended  
18 and that KIMURA could only attend as TOJO's attendant,  
19 in paragraph 58 of this summation.

20 KIM-130. In paragraph KK-6 they state that  
21 he was interfering in internal civil affairs of Man-  
22 chukuo. The evidence shows that KIMURA was actually  
23 with the Kwantung Army only a few months and did not  
24 have time to get his feet on the ground, so to speak.<sup>a.</sup>  
25

KIM-128. a. Tr. 28,032.

KIM-130. a. Ex. 113, ex. 3347; Tr. 31,657.

1 It has been shown that as a matter of form it was  
2 customary for correspondence from the Kwantung Army  
3 to the War Ministry to be sent in the name of the  
4 Chief of Staff. It is highly improbable that KIMURA,  
5 who was appointed Chief of Staff on 22 October, would  
6 have had time to go to Manchuria and take over such  
7 matters by 5 November. Even if he had, his name and  
8 seal would have appeared on the telegram on which  
9 neither of them do. In paragraph KK-8 they say that  
10 TAKEBE gave evidence that KIMURA had given him orders  
11 designed to further preparations for an attack on  
12 Russia. TAKEBE testified by affidavit that he re-  
13 ceived orders from General KIMURA, Chief of Staff,  
14 but does not say what kind of orders they were,  
15 whether written, oral, or whether they were in prepa-  
16 ration for a defensive war by the Kwantung Army or  
17 otherwise. <sup>b.</sup> It was customary for all orders issued  
18 by order of the Commander-in-Chief to be signed by  
19 the Chief of Staff. <sup>c.</sup>  
20  
21  
22  
23  
24  
25

KIM-130. b. Tr. 7,584.  
c. Tr. 31,757.



1 KIM-131. In paragraph KK-9, the prosecu-  
2 tion says that KIMURA by assisting in political,  
3 economic and military preparations which he knows  
4 are directed towards aggressive way, commits a  
5 crime. No doubt KIMURA knew that Japan was prepar-  
6 ing for war. All active chiefs of staff and generals  
7 in the world are continuously preparing and planning  
8 in some degree for war. But who was KIMURA, a sol-  
9 dier who never took part in politics, to decide  
10 whether a war was aggressive or defensive? Carlyle  
11 described the professional soldier adequately when  
12 he said: "If a man becomes a soldier, his soul and  
13 his body thereby become the property of his commanding  
14 officer. He is not allowed to decide for himself  
15 whether the cause for which he fights is good or bad.  
16 His enemies are selected for him and not by him. It  
17 is his duty to obey and ask no questions." There is  
18 no evidence that KIMURA took any part in the formula-  
19 tion of an aggressive policy.

20 KIM-132. Paragraph KK-11, in referring to  
21 KIMURA as Vice War Minister, the prosecution says:  
22 "To him, we find, are entrusted matters concerning  
23 the control and utilization of Manchurian resources,  
24 matters concerning general mobilization in Korea,  
25 Formosa, and the colonies, matters concerning peace

1 time facilities relative to the general mobilization  
2 program, and matters concerning the volume of war-  
3 time requirements in connection with the general  
4 mobilization program." However, there is no evidence  
5 that KIMURA performed any acts relative to the en-  
6 trusted matters listed in prosecution summation  
7 paragraph KK-11.

8 KIM-133. Prosecution in their paragraph  
9 KK-13, say that KIMURA received a communication from  
10 the French Indo-China Expeditionary Force. Actually  
11 all correspondence for the War Ministry was addressed  
12 to the Vice-Minister. Upon its receipt it was dis-  
13 tributed to the competent Bureaus. KIMURA could not  
14 and did not see it all.

15 KIM-134. In reply to prosecution's paragraph  
16 KK-14 and KK-17, we refer you to the testimony of  
17 MUTO (T. 33106-7.)

18 KIM-135. In paragraph KK-19, they refer to  
19 a signal received by KIMURA in October 1941, concern-  
20 ing the massacre of French missionaries. While they  
21 only offer this to show that he should have been put  
22 on his guard, we would like to point out that the  
23 signal was addressed to the Vice-War Minister and does  
24 not have KIMURA's seal thereon.<sup>a.</sup>

25 KIM-135. a. Ex. 3366; T. 31784.

1 KAWAHARA testified that KIMURA did not see this  
2 b.  
3 telegram.

4 KIM-136. In paragraph KK-21 they say that  
5 KUDO, a witness from the Foreign Office, stated that  
6 unimportant protests were referred to the Prisoner of  
7 War Information Bureau but important ones were re-  
8 ferred to the Vice-Minister of War. On cross-

9 examination the witness KUDO was asked if while he  
10 was in office anything was sent to the Vice-Minister  
11 of War. He answered that he thought that there were  
12 but he did not remember. a.

13 KAWAHARA testified that  
14 correspondence was exchanged between the Prisoners of  
15 War Information Bureau and the outside directly, not  
16 through the Adjutant Department of the War Ministry. b.

17 Therefore, KIMURA would not see them.

18 KIM-137. In paragraph KK-22 they say that,

19 "it was the duty of KIMURA, in common with other  
20 officials at the War Ministry, to insure that these  
21 protests were adequately investigated and if they  
22 were founded on fact to remedy the state of affairs  
23 which gave rise to them." It has been shown that

24 KIMURA was not entrusted with any matters of this kind. a.

25 KIM-135. b. T. 31799.

KIM-136. a. 27159.

KIM-136. b. T. 31759.

KIM-137. a. Ex. 3349, T. 31665.



1 MIKI, who was a bureau chief, testified that he never  
2 heard of any report on the protests against the mal-  
3 treatment of POW's during KIMURA's tenure of office  
4 as Vice-War Minister. <sup>b.</sup> TANAKA, Tadokatsu, testified  
5 likewise; <sup>c.</sup> also KAWAHARA. <sup>d.</sup>

6  
7 We submit that KIMURA was not responsible  
8 for all acts or failures of the War Ministry simply  
9 because his name appeared on incoming correspondence.

10 Please remember that comparatively few pro-  
11 tests were received before KIMURA resigned. It is  
12 true that after he resigned many protests were received.  
13 TOJO testified that "the only complaints that ever came  
14 to my notice were in connection with food and so  
15 forth. Atrocities were not brought to my notice at  
16 all. I am astounded at the truth regarding atrocities  
17 that is now being revealed in the newspapers."

18 KIM-137-A. KAWAHARA testified that, "Both  
19 terms, Vice-Minister of War and Vice-Minister of  
20 Foreign Affairs, are used on the document as a mere  
21 matter of form. That is to say, it is a matter of  
22 custom that all documents sent from one ministry to  
23 another ministry -- sent from another ministry to  
24 the War Ministry are sent in the name of the  
25

KIM-137. b. T. 31717.  
c. T. 31815.  
d. T. 31754.

1 ~~Vice-Minister of that ministry and are addressed to~~  
2 the Vice-Minister of the War Ministry. And, there-  
3 fore, even though the document itself is addressed  
4 from a vice-minister to a vice-minister, it is  
5 erroneous to assume that it is actually addressed  
6 only to the Vice-Minister; rather it should be in-  
7 terpreted as being sent -- as a document being sent  
8 from one ministry to another ministry." <sup>a.</sup>

9 KIM-138. In paragraph KK-25, they say,  
10 "KIMURA's attitude towards prisoners of war is shown  
11 particularly in his complaint that the accommodations  
12 which it was proposed to provide for the prisoners  
13 were too good."

14 An examination of the exhibit cited shows  
15 that theological schools and a foreigners school were  
16 being considered as quarters for POW's. The War  
17 Ministry asked if they were not too good for POW's  
18 and requested that full plans be drawn up and submitted  
19 after investigation.

20 We submit that if the War Ministry had deemed  
21 it necessary to elaborate on the matter they would  
22 have said, "There is in Korea a silk reeling warehouse  
23 and a military barracks which is well suited for POW's.  
24 KIM-137-A. a. T. 31795.  
25

1 These places are better for POW's and the theological  
2 schools are better for schools."

3 The exhibit shows that adequate quarters  
4 were made available for P.W's. It also shows that  
5 the reply made by the War Ministry was personally  
6 approved by the War Minister.

7 KIM-139. In paragraph KK-28 they say that  
8 KIMURA was aware that the oath not to escape was  
9 being compulsorily administered to prisoners of war.  
10 They cite exhibit No. 1975. There was nothing read in  
11 the record from exhibit No. 1975 concerning anyone  
12 taking an oath. An examination of the exhibit dis-  
13 closes that there is one sentence in which such an  
14 oath is mentioned. However, this sentence was cor-  
15 rected by the Language Arbitration Board.<sup>a.</sup> to read,  
16 "we were able to secure the pledge from all of them."  
17  
18  
19  
20  
21  
22  
23  
24

25 KIM-139. a. See record of March 9, 1948; (Transcript  
not printed up to this date).



K  
a  
p  
l  
e  
a  
u  
&  
Y  
e  
l  
d  
e  
n

1 We submit that the above is not evidence  
2 that KIMURA knew that an oath was being compulsorily  
3 administered. We further submit that there is nothing  
4 in the record at any other place that is evidence of  
5 such knowledge. There is no evidence that KIMURA saw  
6 the correspondence and his seal does not appear on it.  
7 The POW Punishment Act providing that POW's would be  
8 permitted to pledge that they would not attempt to  
9 escape and would receive certain benefits in return  
10 was passed after KIMURA resigned.

11 KIM-139A. In Paragraph KK-27, they say  
12 that, "KIMURA also knew of the use of prisoners of  
13 war in work, having direct connection with the opera-  
14 tions of war." They cite exhibits 2010 and 1969 upon  
15 neither of which does KIMURA's name appear.

16 KIM-139B. Paragraph 30 of KK-1 says,  
17 "KIMURA as a member of Imperial General Headquarters  
18 must along with the War Minister and the Chief of the  
19 General Staff take the responsibility of ordering in  
20 February 1943, the speeding up of the work by three  
21 months and thus greatly increasing the already growing  
22 death rate."  
23

24 In the first place, we submit that KIMURA  
25 was not a member of Imperial General Headquarters.<sup>a.</sup>

KIM-139B.

a. See KIMURA Summation, KIM.56-57-58.

TOJO testified that it was the Chief of the  
1 Army General Staff who undertook to direct the con-  
2 struction work of the railway, but as War Minister  
3 he held the administrative responsibility as super-  
4 vising authority over the POW's. When informed in  
5 May 1943 of deficiencies in the sanitary conditions  
6 and treatment of the POW's, he despatched General  
7 HAMADA, Chief of the POW Control Section and some  
8 surgeons there.<sup>b.</sup> KIMURA had resigned as Vice War  
9 Minister 11 March 1943. TOJO also testified, "I was  
10 consulted and agreed to the proposed undertaking by  
11 the General Staff. With respect to labor in connection  
12 with the work on the railway, I agreed to the employ-  
13 ment of prisoners of war, which were placed under the  
14 jurisdiction of the War Minister."<sup>c.</sup>

16  
17  
18  
19  
20  
21  
22 KIM-139B.

23 b. Tr. 36422.

24 c. Ex. 3369, par. 9, Tr. 31816.

25

1                    KIM-140. Paragraph KK-31 states that, as  
 2 Vice-Minister, KIMURA was a member of a conference  
 3 which was called on to decide whether some action,  
 4 illegal under international law, should be taken against  
 5 the Doolittle fliers. We submit that the evidence  
 6 does not show that KIMURA attended a conference concern-  
 7 ing this matter. He could be strongly opposed to the  
 8 decision without attending the conference. We invite a  
 9 close reading of the testimony cited by the prosecu-  
 10 tion.<sup>a</sup> We have already shown that KIMURA had nothing  
 11 to do with the Articles of War in Paragraph 96 of this  
 12 summation. Exhibit 1992 is an example of a Vice Min-  
 13 ister's Note by Order.<sup>b</sup>

14                    KIM-141. The Japanese Military Court Martial  
 15 Law which was in effect even before the war started  
 16 provided that the Temporary Court Martial shall be  
 17 specially established as needed by the army and organ-  
 18 ized in the event of war or an incident.<sup>a</sup> The Language  
 19 Board corrected exhibit 1992, which is the alleged  
 20 illegal order signed by KIMURA, to read: "In regards  
 21 to the above courts-martial, the provisions of the  
 22 specially established courts-martial stated in the  
 23 Army Courts-Martial Law shall be applied."<sup>b</sup>

25 KIM-140. a. Tr. 14,387  
               b. Ex. 3364, par. 8; ex. 3369, par. 8, tr.  
                      14,385; see KIM-125-126 of this summation  
KIM-141. a. Tr. 31,678  
               b. Tr. 31,676



KIM-142. Paragraph KK-32 states, "But it  
1 is very clear from the evidence of TANAKA, Ryukichi,  
2 that in the absence of the accused TOJO, the accused  
3 KIMURA has carried out the duties of the War Minister  
4 other than those relating to cabinet matters, such as  
5 policy making, politics, economics, and diplomacy."

6 "We read this evidence exactly opposite, which I quote:

7 "Q Now getting back to the question of when  
8 TOJO was absent from his office as War Minister, after  
9 he became Premier, did he turn over any of his authori-  
10 ties and responsibilities to KIMURA?"<sup>a</sup>

11 "TANAKA: Yes, some very small matters rela-  
12 tive to business routine, but with respect to state  
13 affairs such as policy making, politics, economics, and  
14 diplomacy, not at all."<sup>b</sup>

15 "Q Actually, then, TOJO was War Minister  
16 as well as Premier?

17 "TANAKA: Yes.

18 "Q And even while TOJO was out of his  
19 office and KIMURA was acting as War Minister, he never  
20 made any important decisions?

21 "A He cannot make any important decisions."

22 Also please remember that TANAKA was called by the

23 KIM-142. a. Tr. 14,387  
24 b. Tr. 14,388  
25

prosecution and not by KIMURA. TOJO testified that  
1 KIMURA's status was not changed after he, TOJO, became  
2 concurrently War Minister and Prime Minister.<sup>c</sup>

3 KIM-143. In paragraph KK-32 they say that  
4 "In addition, these regulations show that before any  
5 important matters are formulated by the Bureau Chiefs  
6 they must receive the approval of the Minister and  
7 Vice-Minister for War, and similarly, none of the  
8 bureaus can carry any decision into effect without the  
9 approval of the Minister and Vice-Minister. MIKI  
10 said, "Of course it is very desirable to obtain the  
11 approval both of the War Minister and the War Vice-Minis-  
12 ter, but it is not a violation of regulations to carry  
13 out any matters with the direct approval of the War  
14 Minister and not obtaining the approval of the Vice-  
15 Minister.  
16 Minister.

17 Question by the President: "When the War  
18 Minister decides the policy, has that policy to be  
19 approved by the Vice-Minister?

20 "MIKI: My belief is that no approval was  
21 necessary."<sup>a</sup> See also the testimony of SAWAMOTO and<sup>b</sup>  
22 SHIBAYAMA.<sup>c</sup>

23  
24 KIM-142. c. Tr. 36,497; see KIM-41 of this summation  
25 KIM-143. a. Tr. 31,721  
b. Tr. 31,673  
c. Tr. 31,802

1 KIM-143-A. The Chiefs of Bureaus and Depart-  
 2 ments were under direct control of the Minister, ad-  
 3 ministered their duties by order of the Minister,  
 4 and were directly responsible to the Minister. There-  
 5 fore, they could present their opinion directly to the  
 6 Minister and ask his decision, and the Minister could  
 7 directly command and order them.<sup>a</sup> Consequently, during  
 8 KIMURA's tenure of office as Vice-Minister the various  
 9 bureau heads frequently got into direct contact with  
 10 the Minister and decisions were made without the pres-  
 11 ence or consultation with the Vice-Minister.<sup>b</sup>

12 KIM-144. Paragraph KK-41 states, "Until  
 13 December, 1944, the internment camp at Tavoy was under  
 14 the command of the Independent 24th Mixed Brigade, a  
 15 unit under KIMURA's command." Please remember that  
 16 KIMURA did not arrive in Burma until the middle of  
 17 September, 1944. If you care to examine the exhibit,  
 18 you will find that the last date of an atrocious act  
 19 at Tavoy internment camp was April, 1943, and there  
 20 are none mentioned as having occurred during the  
 21 brief time KIMURA was in command.<sup>a</sup>

23 We wish to call your attention to the fact  
 24 KIM-143-A. a. Ex. 3031; tr. 27,077; tr. 31,804; 31,672,  
 25 31,712  
 b. Tr. 14,398  
KIM-144. a. Ex. 1555



1 that most of the atrocities which occurred near Ran-  
2 goon were after the headquarters had moved to Moulmein  
3 in April. There has been some conflict of evidence  
4 as to who was in command of the Rangoon Jail POW Camp.  
5 We shall not discuss that at length, because the evi-  
6 dence shows that conditions were generally good<sup>b</sup> during  
7 the time that KIMURA was in command, if he was. We  
8 refer you to the summations of HATA and DOHIHARA  
9 regarding the responsibility of an area commander  
10 concerning prisoner-of-war camps and unlawful acts  
11 committed by Japanese troops. KIMURA came under the  
12 same regulations.  
13

14 KIM-145. The prosecution also says in para-  
15 graph KK-44: "He must have been informed of a protest  
16 sent on 14 July 1944 as to the treatment of prisoners  
17 in the Moulmein area. It was not answered until 15  
18 May 1945, and as KIMURA took over command on the 12th  
19 of September 1945, it is reasonable to assume that it  
20 was investigated, if at all, during the period of his  
21 commandership." In answer to that, we would like once  
22 more to point out that for a period of a year and a  
23 half between the time that KIMURA resigned as Vice-War  
24 Minister until he took command of the Burma Area Army,  
25 KIM-144. b. KIM-108-109-106

1 he was in ordinance administration and had nothing  
2 whatever to do with anything of this nature. He was in  
3 that position on the 16th day of July 1944 when the  
4 protest was lodged. It is true that KIMURA was in  
5 command of the Burma Area Army in May 1945. You will  
6 recall that IKEJIRI, who was Adjutant of the Burma  
7 Area Army, testified as follows:

8 "Q Did you ever as an officer handling  
9 correspondence in relation to POW's receive an official  
10 communication inquiring into the conditions of prisoners  
11 in Moulmein camps?

12 "A (IKEJIRI) No."<sup>a</sup>

13 KIM-145-A. In paragraph KK-46 they say  
14 that "Captain TAZUMI gave the lie to the contention  
15 that the Rangoon Jail Prison Camp did not come under  
16 the control of the Burma Area Army." Please remember  
17 that the Interrogations of TAZUMI were placed in evi-  
18 dence by the defense. If KIMURA had been trying to  
19 evade any responsibility in this matter, we would not  
20 have offered the evidence of TAZUMI in the first place.  
21 We submit that if the Tribunal is going to take any  
22 part of TAZUMI's evidence as the truth, then his testi-  
23 mony concerning the generally good conditions at Rangoon  
24 should be given full weight."<sup>a</sup>

25 KIM-145. a. Tr. 27,552

KIM-145-A a. Tr. 27,565; tr. 27,573-A

## CONCLUSION

1 KIM-146. I should like to point out that  
2 the prosecution did not see fit to indict the man  
3 who held the comparable position of KIMURA in the  
4 Navy Ministry during the Pacific War, namely SAWAMOTO,  
5 who was the Navy Vice-Minister.  
6

7 KIM-147. In conclusion, we submit that the  
8 prosecution has wholly failed to prove their case  
9 against KIMURA. On the other hand, we have shown  
10 that KIMURA was a professional soldier of good  
11 character who followed all of the precepts of honor-  
12 able soldiers. He left matters of politics and  
13 diplomacy to those who were trained in such and  
14 devoted his efforts to being an obedient servant of  
15 his country. We have shown that while KIMURA was  
16 Vice-War Minister he had no more authority than any  
17 other Vice-Minister. When KIMURA was indicted, the  
18 prosecution probably thought that KIMURA was in  
19 effect the War Minister, which was a natural assump-  
20 tion to be made by those not entirely familiar with  
21 all of the facts.  
22

23 We have shown that KIMURA had no authority  
24 to decide any matters, except a few unimportant  
25 "entrusted matters," none of which were policy  
making, and was merely an administrator and coordinator



of the efforts of the members of the Ministry.

1           The prosecution seem to think that he should  
2 have resigned sooner. Every member of this Tribunal  
3 knows how difficult it is in war times for a soldier  
4 to exercise his rights as an individual. A conscientious  
5 soldier submerges his higher self and obeys the  
6 will of the group. Are we to condemn a soldier for  
7 practicing all of those things which have been tenets  
8 of the soldier's creed for ages? If we as world  
9 citizens are to have soldiers serve for us, should  
10 we not assure them that obedience is still required  
11 from a soldier? Are not future soldiers entitled to  
12 the assurance that they will not be punished for  
13 doing their utmost as soldiers?

15           KIMURA, as the Commander of the Burma Area  
16 Army, did what he could to prevent criminal acts by  
17 his soldiers to the very last; even in the great confusion  
18 of defeat which made all efforts extremely  
19 difficult. We ask the Tribunal to recognize the good  
20 will of KIMURA.

22           We submit that KIMURA has not violated any  
23 law of the Charter or any international law and ask  
24 that he, as a member of the disarmed Japanese military  
25 forces, be permitted to return to his home and given  
an opportunity to lead a peaceful and productive life.

1 THE PRESIDENT: It is now too late to start  
2 on a new case. We will adjourn until half-past nine  
3 on Monday morning.

4 (Whereupon, at 1547, an adjournment.  
5 was taken until Monday, 22 March 1948, at  
6 0930.)

7 - - -  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25